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No. 83-1961

Supreme Court, U.S.  
FILED  
JAN 11 1985

ALEXANDER L. STEVENS  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1984

LANDRETH TIMBER COMPANY,  
*Petitioner,*  
v.

IVAN K. LANDRETH, LUCILLE LANDRETH,  
THOMAS E. LANDRETH, IVAN K. LANDRETH, JR.,  
AND KATHLEEN LANDRETH,  
*Respondents.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

JOINT APPENDIX

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

Docket No. C78-663R

IVAN K. LANDRETH and JANE DOE LANDRETH, husband  
and wife; THOMAS E. LANDRETH and MARY DOE LAN-  
DRETH, Husband and wife; IVAN K. LANDRETH, JR. and  
SARA DOE LANDRETH, husband and wife,  
*Deft-third party pltf.*

vs.

LANDRETH TIMBER COMPANY, INC.,  
*Third party deft.*

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1978		
Nov 1	1	Filed complaint & issued 20 days summons
Nov 15	2	Filed notice of appearance for defts, Mr. James A. Smith, Jr., Attorney.
Nov 20	3	Filed marshal's return on s/c of Kvan (sic) K. Landreth.
Nov 28	4	Filed & Ent. stipulation for extension of time to answer to December 18, 1978. Mailed copies.
Dec 15	5	Filed pltfs first amended complaint and jury demand.
Dec 26	6	Filed answer affirmative defenses, and coun- terclaims of defts Ivan K. Landreth and Lucille Landreth, Husband and wife; Thomas E. Landreth; Ivan K. Landreth, Jr., and Kath- leen Landreth, Husband and wife, Jury de- mand.

DATE	NR.	PROCEEDINGS
1979		
Jan 15	7	Filed Third party pltf-Landreth Timber Co., Inc., reply to defts Counterclaims.
Jan 25		Lodged stipulation and order extending time to answer interrogatories and produce documents.
Jan 29	8	Filed & Ent. stipulation and order extending time to answer interrogatories and produce documents to and including February 26, 1979. Mailed copies.
Feb 27		Lodged stipulation and order extending time to answer interrogatories and produce documents.
Feb 28	9	Filed & Ent. order (Stipulated) for extending time to answer interrogatories and produce documents to Tuesday, March 13, 1979. Mailed copies.
Mar 2	10	Filed defts notice of deposition of Hale & Dorr, Samuel S. Dennis, Anil Khosla and Al Willard.
Mar 2		Issued summons on amended complaint on Kathleen Landreth, Ivan K. Landreth, Lucille Landreth, Thomas E. Landreth.
Mar 13	11	Filed defts notice of deposition of Samuel S. Dennis, III.
Mar 13	12	Filed defts affidavit of Mailing.
Mar 28	13	Filed marshal's return on s.c. of Kathleen Landreth, Ivan K. Landreth, Jr.
Mar 30	14	Filed marshal's return on s/c of Lucille Landreth.
Apr 7	15	Filed marshal's return on subpoenas Duces Tecum of Samuel S. Dennis, III.

DATE	NR.	PROCEEDINGS
1979		
Apr 10	16	Filed marshal's return on s/c of Thomas E. Landreth.
Apr 25	17	Filed defts notice of deposition of Jack P. Branch.
May 29	18	Filed return on service of deposition subpoena of Tonasket Timber Co., Att: Custodian of Records.
Jul 13	19	NOTICE OF DEPOSITIONS—of Custodian of Records of Warren & Brewster, Stan Neglay, Lyle Warren, Allan Lambert, Bob Brewster, Phil Harry, and Phil Fuller.
Jul 18	20	NOTICE OF DEPOSITIONS—of Custodian of Records of Pease & Beadling and Charles E. Pease, defts instance.
Jul 26		Ent. order directing counsel to file trial briefs and voir dire, instructions and agreed pretrial order by November 2, 1979, Counsel Notified.
Aug 8	21	RETURN ON SERVICE—of deposition subpoena of Custodian of Records for Pease & Beadling.
Aug 8	22	RETURN ON SERVICE—of deposition subpoena of Charles E. Pease.
Aug 21	23	NOTICE OF DEPOSITION—of Edward T. Engst, Eugene Graf & Issued, Patrick J. Peyton and Custodian of Records, Old National Bank, Tonasket, WA.
Aug 29	24	EDWARD ENGST'S RESPONSE—and objections to subpoena Duces Tecum.
Sept 7	25	DEFTS NOTICE—of deposition of Jack P. Branch.

DATE	NR.	PROCEEDINGS
1979		
Sept 10	26	DEFTS NOTICE—of deposition of Phil Fuller, Phil Harry, Harry Kennison, George Morrell.
Sept 12	27	LETTER—to counsel advising them that this case is now under the 39.1 ruling.
Oct 1	28	DEFTS NOTICE OF DEPOSITION—of Custodian of Records, Graham & Dunn & Issued.
Oct 1	29	DEFTS NOTICE OF DEPOSITION—of John Bolten, Sr. and custodian of Records, Hale & Dorr.
Oct 12	30	JOINT MOTION—to continue date for filing pretrial order. No Notice.
Oct 12		LODGED ORDER
Oct 16	31	ORDER—continuing date for lodging pretrial order, to March 14, 1980. Mailed copies.
Oct 25	32	RETURN ON DEPOSITION SUBPOENA—of John Bolten, Sr., with attachments.
Nov 8	33	PLTFS OBJECTIONS—to subpoenas
Nov 19	34	LETTER—from Guy P. Michelson regards the settlement conference. <i>Court Grants</i> —your letter request to extend the settlement conference date to Dec. 10, 1979 under the provisions of Rule 39.1 (c).
Nov 19		ENT ORDER—court continues the due date for settlement conference to Dec. 10, 1979 under rule 39.1 (c).
Dec 11	35	DEFTS NOTICE—of deposition of Phillip Cook.
Dec 26	36	DEFTS NOTICE—of deposition of Harry Kennison.

DATE	NR.	PROCEEDINGS
1980		
Jan 25		ENT ORDER—court directs counsel to file a notice of selection of mediator and a status report on (sic) later than February 15, 1980.
Feb 1	37	LETTER—from James A. Smith, and Malcolm L. Edwards regards a status report.
Feb 6	38	DEFTS NOTICE—of deposition of Custodian of records for Rainier National Bank.
Feb 11	39	DEFTS RETURN—on Deposition subpoena of Custodian of Records, for Rainier Nat. Bank.
Apr 2		ENT ORDER—transferring case to Judge William Enright and scheduled for trial period of May 5-16, 1980. Pretrial order to be filed April 23, Trial briefs due April 30, 1980. Counsel advised.
Apr 10	40	DEFTS NOTICE—of deposition of Harry Kennison.
Apr 15	41	RETURN—on deposition subpoena of Harry Kennison.
Apr 25	42	LETTER—from John W. Hathaway regards requesting a continuance of the trial date.
May 1		ENT ORDER—case con't from Judge Enright's May Calendar to November 17, 1980 before Judge Sharp for trial. PTO and Trial briefs due October 31, 1980. Counsel Advised.
May 19	43	LETTER—from William Dwyer regards a status conference, no settlement has been reached still set for trial.
June 11	44	DEFTS NOTICE—of deposition of Robert Ingram, J. Thomas Wood and George Morrell.
June 12	45	RETURN ON DEPOSITION SUBPOENAS—of Robert Ingram.



DATE	NR.	PROCEEDINGS
1980		
June 16	46	AFFIDAVIT—of service of Deposition subpoena of J. Thomas Wood.
Jul 14	47	NOTICE OF DEPOSITION—of Eugene Graf, behalf plaintiff.
Jul 16	48	RETURN ON SERVICE—deposition subpoena to Eugene Graf behalf pltf.
Jul 22	49	ORDER of Transfer from Judge Sharp to Judge Rothstein. cc to Counsel.
Aug. 7	50	PLAINTIFF'S NOTICE of Deposition of Custodian of Records for Midvalley Bank. Subpoena Issued.
	51	PLTF'S MOTION for leave to amend complaint.
	52	NOTICE of Motion for Leave to Amend Complaint. Noted for 8/22/80.
	53	BRIEF in support of Motion for leave to amend Complaint.
Aug. 7		LODGED Second Amended Complaint and <i>JURY DEMAND</i> .
Aug. 8	54	AFFIDAVIT of Service of Notice of Motion for Leave to amend Complaint.
	55	AFFIDAVIT of Service of Subpoena on JANE M. McCormach.
Aug. 18	56	AFFIDAVIT of IVAN K. LANDRETH in opposition to Pltf's motion for leave to amend its complaint.
	57	DEFENDANTS' MEMORANDUM in opposition to Pltf's motion for leave to amend its complaint.
	58	AFFIDAVIT of James A. Smith, Jr.

DATE	NR.	PROCEEDINGS
1980		
Aug. 19	59	AFFIDAVIT of IVAN K. LANDRETH in opposition to Pltf's motion for leave to amend its complaint.
Aug. 20	60	LETTER to Counsel from clerk re pre-trial conf. of Oct. 24, 1980 at 10 A.M.
	61	PLTF'S REPLY to Defts' memorandum in opposition to Pltf's motion for leave to amend its complaint.
	62	AFFIDAVIT of John W. Hathaway in support of Motion to amend complaint.
Aug. 26	63	Defts' NOTICE of Deposition of Peter H. Townsend—Issued.
Aug. 27	64	AFFIDAVIT OF SERVICE of Deposition Subpoena.
Aug. 29	65	NOTICE of Deposition of A. L. McKimney
Sept 9	66	RETURN ON DEPOSITION SUBPOENA—of Peter H. Townsend.
Sep 25	67	MOTION of defts. for summary judgment on securities claim
"	68	MEMORANDUM in support of defts' Motion for s.j.
"	69	AFFIDAVIT of James A. Smith, Jr.
"	70	AFFIDAVIT of Ivan K. Landreth, Sr.
"	71	NOTICE of defts' Motion for s.j. for 10/17/80
Oct. 7		Received LETTER, motion for Summary Judgment on Securities Claims cont. two Weeks to Oct. 31, 1980.

DATE	NR.	PROCEEDINGS
1980		
Oct. 14		ENT. the preliminary pre-trial conference calendared for Oct. 24, 1980 at 10:00 a.m. is ordered stricken and will be re-set at the convenience of counsel and the Court. cc to counsel.
Oct. 16	72	DEFTS' SECOND MOTION for partial summary judgment.
	73	NOTICE OF DEFTS' SECOND MOTION—Noted for 11/7/80.
	74	AFFIDAVIT of Ivan K. Landreth, Sr. in support of Defts' second motion.
	75	AFFIDAVIT of James A. Smith, Jr. in support of Defts' Second Motion for Partial Summary Judgment.
Oct. 16		LODGED STIPULATION continuing Defts' motion for summary Judgment on securities Claims.
	76	MEMORANDUM in support of Defts' Second Motion for Partial Summary Judgment.
Oct. 22	77	ORDER continuing Defts' motion for summary judgment on Securities Claim to Oct. 31, 1980. cc: to Counsel of Record.
Oct. 23	78	DEFTS' MOTION to Compel production of Documents and Information
	79	NOTICE of consideration of Defts' motion to compel production of documents and information; and request for hearing. Noted for 11/7/80.
	80	DEFTS' MEMORANDUM in support of Motion to Compel Production of Documents and Information.
	81	AFFIDAVIT of Guy P. Michelson.

DATE	NR.	PROCEEDINGS
1980		
Oct. 22		ENT. upon the court's on motion, it is ordered that trial in this case is continued from Nov. 17, 1980 to Feb. 9, 1981 at 9:30 A.M.
Oct. 28		ENT. Pltf's response to Defts' motion for Summary Judgment, filed Sept. 25, 1980 shall be filed on or before Nov. 7, 1980. Pltf's response to Defts' second motion for Summary Judgment, filed Oct. 16, 1980 shall be filed on or before Nov. 12, 1980.
Oct. 31	82	DEFTS' NOTICE OF DEPO. of Custodians of Records: Pack River Management Company, W-I Forest Products, Inc.
Nov. 3	83	AFFIDAVIT of John W. Hathaway in opposition to Defts' motion to compel.
Nov. 4	84	ORDER granting leave to amend complaint. cc: counsel of Record.
	85	PLTF'S MEMORANDUM in opposition to Defts' motion to compel.
Nov. 5	86	AFFIDAVIT of Service of Order granting Defts' second motion etc.
	87	AFFIDAVIT of Service of Notice of Consideration of Defts' motion to compel production of documents etc.
Nov. 7	88	DEFTS' NOTICE of Deposition of James M. Harrison, Warren S. Cooper.
Nov. 7	89	DEFTS' REPLY MEMORANDUM in support of Motion to compel production of Documents and Information.
	90	AFFIDAVIT of Guy P. Michelson.
		LODGED Order compelling production of Documents & Information



DATE	NR.	PROCEEDINGS
1980		
Nov. 10	91	MEMORANDUM in opposition to Defts' first motion for summary Judgment on Securities Claims.
	92	AFFIDAVIT of Samuel S. Dennis in opposition to Defts' motion for Summary Judgment.
	93	AFFIDAVIT of John W. Hathaway in opposition to Defts' motion for Summary Judgment on Securities Claims.
Nov. 12	94	AFFIDAVIT of Service.
	95	AFFIDAVIT of Service of Defts' motion for Summary Judgment and affidavit of James Smith & Ivan Landreth.
Nov 14	96	DEFTS' NOTICE of Deposition: Custodian of Records, First Natl. Bank of Boston.  LETTER to Judge Rothstein from John Hathaway requesting extension of time to file responses—Granted. Now due on 11/10/80 & 11/14/80.
Nov. 14	97	DEFT'S REPLY to Pltf's Memorandum in opposition to Defts' first motion for summary judgment on Securities Claims.
	98	SUPPLEMENTAL AFFIDAVIT of Guy P. Michelson supporting Defts' motion for Summary Judgment on Securities Claims.
	99	PLTF'S MEMORANDUM in opposition to Defts' second motion for partial Summary Judgment on Federal and State Securities Acts and Damages.
Nov. 17	100	Motion to strike portions of affidavit of Samuel S. Dennis submitted in opposition to Defts' motion for summary judgment.

DATE	NR.	PROCEEDINGS
1980		
	101	NOTICE OF CONSIDERATION of Defts' motion to strike portions of Affidavit of Samuel S. Dennis in opposition to Defts' motion for Summary Judgment. Noted for Dec. 5, 1980.
	102	MEMORANDUM in support of Defts' motion to Strike portions of affidavit of Samuel S. Dennis submitted in opposition to Defts' motion for summary judgment.
	103	AFFIDAVIT of Guy P. Michelson in support of Defts' motion to Strike.
Nov. 21	104	DEFTS' REPLY to Pltf's Memorandum in opposition to Defts' second motion for partial summary judgment.
	105	AFFIDAVIT of Ivan K. Landreth.
Dec 1	106	PLTF'S Memorandum in opposition to Defts' motion to strike portion of the Affidavit of Samuel S. Dennis.
	107	ABSTRACT of Deposition of Philip Cook.
	108	AFFIDAVIT of John W. Hathaway in opposition to Defts' motion to Strike.
Dec 2	109	DEFTS' NOTICE of DEPOSITION of John M. Lotz and Custodian of Records, Hidden Hills Land Co.
Dec. 4	110	DEFTS' REPLY to Pltf's Memorandum opposing motion to strike portions of Samuel S. Dennis' Affidavit (Submitted opposition to Defts' first summary judgment motion).
	111	AFFIDAVIT of Service.
Dec 9	112	PLTFS' RESPONSE TO DEFTS' REPLY to Pltfs' Memorandum opposing Deft's motion to strike portions of Dennis' affidavit.

DATE	NR.	PROCEEDINGS
1980		
Dec. 11	113	DEFTS' RENOTE OF DEPOSITION of John M. Lotz and Custodian of Records, HIDDEN HILLS AND COMPANY.
Jan 7	114	AFFIDAVIT of John W. Hathaway in support of Pltf's motion for Summary Judgment on Securities Claims.
	115	PLTF'S MOTION for Summary Judgment on Securities Claims.
	116	NOTICE of Consideration of Pltf's motion for Summary Judgment on Securities Claims, noted for 1/23/81 at 10:00 A.M. Oral argument requested.
	117	PLTF'S MEMORANDUM in support of Motion for Summary Judgment on Securities Claims.
	118	NOTICE of Default. (Pltf's)
1981		
Jan 8	119	NOTICE of Consideration of Pltfs' motion for Summary Judgment on Securities Claims.
Jan 9		Reed Letter from Mr. Michelson to Mr. Hathaway re Defts have until Jan. 14, 1981 to file an answer to Pltf's Second amended Complaint.
Jan 14	120	ANSWER and Affirmative Defenses to Pltf's second amended complaint and Counterclaims of Defendants Ivan K. Landreth and Lucille Landreth, husband and wife; Thomas E. Landreth; Ivan K. Landreth, Jr., and Kathleen Landreth, husband and wife. DEMAND FOR JURY.
Jan 22		LOGED Stipulation and Order for extension of Time.

DATE	NR.	PROCEEDINGS
1981		
Jan 30	121	ORDER for extension of Time (Stip.) filing of Defts' opposition to Pltf's Memorandum in Support of Motion for Summary Judgment on Securities Claims—Extended to 2/2/81. cc: to Counsel.
Feb 2		ENT. in Chambers: at the request of the parties, the Court orders that the trial now scheduled for Feb. 9, 1981 is vacated. The Court calendars a status conference at 10:00 A.M. on April 10, 1981 at which time a new trial date will be established and set.
	122	DEFTS' MEMORANDUM opposing Pltf's motion for summary judgment on Securities Claims.
	123	AFFIDAVIT of Ivan K. Landreth opposing Pltf's Motion for Summary Judgment on Securities Claims.
	124	AFFIDAVIT of Guy P. Michelson
Feb 5	125	AFFIDAVIT of Service. (Doc. #122-124)
Feb 9	126	PLTF'S MEMORANDUM in Response to Defts' Memorandum opposing Pltf's motion for Summary Judgment on Securities Claims.
	127	AFFIDAVIT of John W. Hathaway.
Feb 17	128	SUPPLEMENTAL AFFIDAVIT of Guy P. Michelson in Opposition to Pltf's Motion for Summary Judgment.
Feb 18	129	GUY P. MICHELSON'S AFFIDAVIT supporting Defts' Reply.
	130	DEFTS' REPLY to Pltf's Memorandum in Response to Defts' Memorandum opposing Pltf's Motion for Summary Judgment on Securities Claims.

DATE	NR.	PROCEEDINGS
1981		
Feb 19	131	LETTER from Bogle & Gates—re Status Conference cont to 4/17/81 at 10:00 A.M.
Feb 24	132	SUPPLEMENTAL AFFIDAVIT of Guy P. Michelson in support of Defts' position that this transaction was not a Sale of Securities because Defts retained neither control nor any ownership interest in the Corporation after the sale.
Feb 25	133	DEFTS' SUPPLEMENTARY MEMORANDUM in support of Position that this transaction was not a sale of Securities because Defts retained neither control nor any ownership interest in the Corporation after the Sale.
Feb 26	134	PLTF'S RESPONSE TO DEFENDANTS' SECOND REPLY MEMORANDUM in opposition to Defts' Motion for Summary Judgment on Securities Claims.
Feb 26	135	AFFIDAVIT of John W. Hathaway in support of Pltf's Response to Second Reply.
	136	PLTF'S SUPPLEMENTAL MEMORANDUM in support of its motion for Summary Judgment that Defts' offer and sale of stock in Landreth Timber Co., Inc. to Pltf's purchasing group and others constitute a sale of Security to which the Federal Securities Laws apply.
	137	AFFIDAVIT of Peter Townsend in support of Pltf's motion for Summary Judgment.
Feb 27		ORAL ARGUMENT on cross motions for Summary Judgment on Securities claim held. Both counsel argue their respective positions on the motions to the Court. The court makes advisory rulings and orders the motions to stand submitted.

DATE	NR.	PROCEEDINGS
1981		
Mar 19	138	PLTF'S MOTION for Reconsideration.
	139	NOTICE of Consideration of Pltf's motion for Reconsideration. 4/10/81
	140	BRIEF in support of Pltf's motion for Reconsideration.
**Mar 17	141	LETTER—from Mr. Michelson re: weather (sic) the sale of Landreth Timber Co. constituted the sale of securities—Schedule 3/19/81 the parties to exchange Requests for Admissions regarding facts.  3/25/81—answers to each request will be exchanged by parties.  3/30/81—parties will meet in an effort to resolve disputed issues of fact.  4/3/81—parties will submit to the Court a listing of disputed and undisputed facts, affidavits, Briefs, etc.
Apr 3	142	TRANSCRIPT—proceedings B4 J. Rothstein 2/27/81.
Apr 6	143	MEMORANDUM—Defts' in support of the Court's Preliminary Decision regarding Summ. Jdmt., & oppos. to Pltf's Mot. for reconsideration.
Apr 7	144	MEMORANDUM—Defts' in Support of Motion for Sum. Jdmt.
	145	MEMORANDUM—Pltf Supplemental concerning presence of Investment Contract.
Apr 15	146	MEMORANDUM—Pltf's reply in opposition to defts' memo in support of mot for sum. jdmt. debt retain on (sic) control over business after closing.



DATE	NR.	PROCEEDINGS
1981		
	147	REPLY—Pltf's to Defts' Memo in opposition to Pltf's mot for reconsideration.
	148	AFFIDAVIT—Supplemental of Samuel S. Dennis in opposition to Deft mot for sum. jdmt.
Apr 16	149	REPLY—Defts' to Pltf's supplemental memo re investment contract.
	150	AFFIDAVIT—Guy P. Michelson attny for Defts.
Apr 17		ENT. Hearing Held: The Court orders Pltf's motion for reconsideration DENIED. Deft's motion for sum. Jdmt. on issue of control is GRANTED. Court shall prepare formal order.
	151	AFFIDAVIT—Guy P. Michelson.
Apr 29	152	ORDER—granting deft's motion summary judgment. Pltf's mot for reconsideration is DENIED. cc: to Cnsl.
May 27	153	JUDGMENT—defts' mot for summ jdmt is granted. Pltf's mot for reconsideration is DENIED. cc: to Cnsl.
May 26	154	APPEAL—notice of Pltf. cc: to CCA w/notification of payment. cc: to cnsl of record.
May 29	155	NOTICE Landreth's amended, of apeal. cc: cnsl, CCA
Jun 10	156	CERTIFICATE—regarding transcript of proceedings, Mailed to CCA & Counsel the certificate of record.
Jun 15	157	APPELLEES DESIGNATION—of transcript of proceedings. copy to Court reporter.
14 July	158	ORDER of dismissal cc: cnsl BJR
15 July	159	TRANSCRIPT 4-17-81 proceedings

DATE	NR.	PROCEEDINGS
1981		
20 July	160	NOTICE pltf's, of appeal (order of dismissal) *
		*all documents processed & forwarded to CCA (et)
	161	DESIGNATION pltf's, of no transcript (this appeal)

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 81-3446

LANDRETH TIMBER COMPANY,  
*Plaintiff-Appellant,*

vs.

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and  
wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR.  
and KATHLEEN LANDRETH, husband and wife,  
*Defendants/Appellees.*

RELEVANT DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
1981	
Jul 23	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL FOR APLT. AND APLE.
Jul 23	FILED CERTIFICATE OF RECORD. (N/T) ogm
Jul 23	APPELLANT'S OPENING BRIEF DUE: SEPTEMBER 1, 1981. ogm
Aug 25	Filed, as of 8/24/81 in 81-3280, Order (Wallace & Norris) Upon consideration of aplt's motion to consolidate appeals in 81-3280 and 81-3446 and to adjust the briefing schedules, appeal 81-3280 is dismissed for lack of jurisdiction. The documents before the court reflect that the order appealed from in 81-3280 did not dispose of all claims in the action and was not certified for appeal under Fed. R. Civ. P. 54(b). Aplt's motion to consolidate the appeals is denied as moot. ck
Sept 3	Filed orig and 15 copies of aplt's opening brief and 5 copies of the excerpt of record, (9/1/81). lb

DATE	FILINGS-PROCEEDINGS
1981	
Oct 8	Filed orig & 15 copies of aples' answering brief. (10/5) ck
Oct 26	Fld mtn & ord (CLK) gntg appellant an ext of time to file the reply brief to: 10-27-81. bbm
Oct 29	Filed orig and 15 copies of aplt's reply 10/27/81. lb
Nov 5	Filed as of 7/23/81, RECORD ON APPEAL IN 7 Volumnes, PLEDGS VOL., I, II, III, IV, V, VI, ORIG ONLY, CERT COPY, R/T's Vol., VII ORIG ONLY. lb
1982	
Feb 25	Recvd Orig & 15 SEC Amicus Curiae Briefs. (2/24)c jc
Feb 25	Filed Motion of The SEC for leave to file memorandum as amucus curiae out of time. (CIVATT with copies of amicus briefs.) jc
Mar 8	Filed Order, (FLETCHER), The court issues the following order: (a) the motion of the Securities and Exchange Commission for leave to file a late amicus curiae brief is granted, and the brief already received is ordered filed; and (b) aple's may file a supplemental brief not to exceed seven (7) pages in response to the amicus curiae brief on or before fourteen (14) days from the entry of this order. lb
Mar 8	Filed orig and 15 copies of SEC amicus briefs. (2/24/82). lb
Mar 10	Filed aple's memorandum in opposition to the Securities and Exchange Commission's motion for leave to file memorandum out of time, to CIVATT, 3/8/82. lb
Mar 12	Filed aple's motion for reconsideration of order granting SEC leave to file amicus curiae brief out of time and for an extension of time for filing reply brief, to CIVATT, 3/12/82. lb



DATE	FILINGS-PROCEEDINGS
1981	
Mar 19	Filed Order, (FLETCHER, AND REINHARDT, Circuit Judges), Upon consideration of aple's opposition and motion for reconsideration, the court's March 8, 1982 order granting the Securities and Exchange Commission leave to file a brief as amicus curiae is affirmed. Aple's motion for an extension of time through April 19, 1982 to file their supplemental brief is granted. The supplemental brief shall not exceed ten (10) pages. lb
Apr 27	Filed as of 4/23/82, orig and 15 copies of aple's brief, (10 pages), (4/19/82). jw
Aug 12	Filed aple's additional citations, to Panel. 8/10/82. lb
Aug 30	Filed aplt's additional citations, to Panel, 8/27/82. lb
Sept 7	Filed as of 9/2/82, SEC motion for leave to participate in oral argument, to Panel, 9/1/82. lb
Sept 7	Filed aple's memorandum in opposition to motion of the SEC for leave to participate in oral argument, to Panel, 9/3/82. lb
Sept 8	ARGUED AND SUBMITTED BEFORE: BROWNING, TUTTLE (11th Circuit), REINHARDT, CJJ. lb
Sept 8	Filed as of 9/7/82, Order, (Clk of Ct), In response to the motion by the Amicus Curiae requesting permission to argue before the court in this cause calendared in Seattle on September 8, it is ordered that the amicus may argue within the thirty (30) minutes allowed to aplt as is agreed to between the parties. lb
Sept 9	Filed aplt's additional citations, to Panel. lb
Sept 20	Filed aple's response to aplt's citation, to Panel, 9/16/82. lb

DATE	FILINGS-PROCEEDINGS
1981	
Nov 15	Filed aplt's motion to add parties plaintiff, memorandum in support of motion and affidavit of Malcolm L. Edwards, to PANEL, 11/11/82. lb
Nov 23	Filed as of 11/2, aple's memorandum in opposition to aplt's motion to add parties plaintiff, (11/22/82), to PANEL. jw
Dec 14	Filed, as of Dec. 3, aplt's amendment to its mtn to add parties pltf; and aplt's reply to aple's opposition to aplt's mtn to add parties pltf. (panel) 12/1 -db-
1983	
Jan 3	Filed Order (Dpty clrk) Judge Farris has been drawn to replace Judge Reinhardt on this case. The panel is now Judges Browning, Tuttle, and Farris. dm
Jan 20	Filed Order (BROWNING, TUTTLE & FARRIS) Because of the unavoidable withdrawal of Judge Reinhardt from further participation in this case, it is resubmitted to the panel of Judges Browning, Tuttle, and Farris. Judge Farris will listen to the tapes of oral argument and participate in further deliberations and in the decision. dm
Mar 03	Filed Order (BROWNING, TUTTLE & FARRIS) Aplt's motion to add parties Plaintiff is submitted for decision with the merits of the appeal. dm
Mar 31	Rec'd letter dated 3/30/83 from counsel for amicus (SEC) re: add'l citations, PANEL. dm
June 13	Rec'd aple's supplemental authorities, (6/10), (PANEL). dm
June 21	Rec'd as of June 20, ltr dtd June 16, from counsel for aplt, re: response to aple's supplemental authorities. (panel) -db-

DATE	FILINGS-PROCEEDINGS
1984	
Mar 07	ORDERED OPINION FILED (BROWNING) AND JUDG TO BE ENTD. dm
Mar 07	FILED OPINION—AFFIRMED. PLTFS' MOTION FILED 11/15/82 IS DENIED. dm
Mar 07	FILED AND ENTERED JUDGMENT. dm
Mar 19	Filed, as of 3/15, in Seattle, aples' bill of costs, (3/15). dm
Mar 23	Rec'd from counsel for Aples' letter dated 3/21/84. RE: Inaccuracies in opinion. (PANEL) ru
Mar 29	MANDATE ISSUED
Apr 02	Filed, as of 3/23, aplt's objection to aples' bill of costs, (3/22). dm
Apr 04	Filed Order (DPTY CLK) Upon due consideration of the bill of costs of aples and the objection thereto, aples are awarded costs as follows: aples' brief—\$111.72; aples' supplemental brief - \$37.18 - TOTAL - \$148.90. Costs incurred in the preparation and transmission of the record are taxable in the district court. See Fed. R. App. P. 39(e). dm
Apr 04	MANDATE ISSUED—AMENDED TO INCLUDE COSTS. dm
Apr 24	Filed Order (BROWNING, TUTTLE & FARRIS) The opinion dated March 7, 1984 is modified to delete the entire paragraph beginning: "For a variety of reasons, Landreth II . . .," slip op. at 13. The following shall be added to the beginning of the following paragraph: Landreth II was unprofitable. It sold the mill, and went into receivership. dm.
June 11	Rec'd SC notice of filing petition for cert on 5/31, SC#83-1961. dm
Nov 28	Rec'd as of Nov. 16, copy of supreme court order filed Nov. 13, 1984, granting petition for writ of certiorari. (panel) -db-

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

Civil Action No. \_\_\_\_\_

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

vs.

IVAN K. LANDRETH and JANE DOE LANDRETH, husband  
and wife, THOMAS E. LANDRETH and MARY DOE LAN-  
DRETH, husband and wife, IVAN K. LANDRETH, JR. and  
SARA DOE LANDRETH, husband and wife,  
*Defendants.*

COMPLAINT

1. This is an action by the plaintiff Landreth Timber Company, Inc., to recover for violations of sections 12(2) and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77l(2) and 77q(a); section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b); Rule 10b-5 of the Securities and Exchange Commission, 17 C.R.F. § 250.10b-5; sections 21.20.010 and 21.20.430 of the Securities Act of Washington, RCW § 21.20.010 and § 21.20.430; and the common law of the State of Washington arising from the sale of securities to the plaintiff Landreth Timber Company, Inc., by the defendants Ivan K. Landreth, Thomas E. Landreth, and Ivan K. Landreth, Jr.

THE PARTIES

2. The plaintiff, the Landreth Timber Company, Inc. (hereinafter "Landreth Timber II"), is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Tonasket, Washington. The plaintiff Landreth Timber II is, as a result of a merger, the survivor of the B & D Company,



Inc., which, by the purchase of the securities at issue herein, acquired all of the outstanding shares of stock in the Landreth Timber Company, Inc., a corporation organized and existing under the laws of the State of Washington (hereinafter "Landreth Timber I"). The plaintiff Landreth Timber II is engaged in the business of logging, processing and finishing raw timber, and selling finished lumber products.

3. The defendant Ivan K. Landreth is a citizen of the State of Washington and resides in Oroville, Washington; all acts herein alleged to have been performed by, for or with the knowledge of Ivan K. Landreth were for and to his individual benefit and the benefit of the marital community composed of he and Jane Doe Landreth.

4. The defendant Thomas E. Landreth is a citizen of the State of California and resides in Irvine, California; all acts herein alleged to have been performed by, for or with the knowledge of Thomas E. Landreth were for and to his individual benefit and the benefit of the marital community composed of he and Mary Doe Landreth.

5. The defendant Ivan K. Landreth, Jr., is a citizen of the State of Washington and resides in Oroville, Washington; all acts herein alleged to have been performed by, for or with the knowledge of Ivan K. Landreth, Jr., were for and to his individual benefit and the benefit of the marital community composed of he and Sara Doe Landreth.

#### JURISDICTION

6. The jurisdiction of this Court is invoked pursuant to section 22(a) of the Securities Act of 1933, as amended 15 U.S.C. 77v(a); and section 27 of the Securities Exchange Act of 1934, as amended 15 U.S.C. § 78aa. The jurisdiction of this Court is also invoked pursuant to 28 U.S.C. § 1331 as this action arises under the laws of the United States. The amount in con-

troversy exceeds the sum or value of ten thousand dollars (\$10,000) exclusive of interest or costs. This Court has pendant jurisdiction over those claims arising under the laws of the State of Washington.

#### COUNT I

7. On or about August 15, 1977, Jack P. Branch, as agent of the defendants Ivan K. Landreth, Thomas E. Landreth and Ivan K. Landreth, Jr.,<sup>1</sup> contacted Samuel S. Dennis (hereinafter "Mr. Dennis") and proposed that Mr. Dennis purchase from the defendants all of the outstanding shares of stock of Landreth Timber I. Landreth Timber I was, at all relevant times, engaged in the business of logging, processing and finishing raw timber, and selling finished lumber products.

8. On numerous and diverse occasions during the months of August and September, 1977, Mr. Dennis met; communicated and corresponded with the defendant Ivan K. Landreth and Jack P. Branch as agent for the defendants. During the course of those meetings and communications, the defendants informed Mr. Dennis that the mill used by Landreth Timber I to process and finish raw timber had been destroyed by fire in or about May, 1977, and therefore was not operative. The defendants further informed Mr. Dennis that the mill was being reconstructed; that the bulk of the equipment to be installed in the reconstructed mill had been purchased; and that the completion of reconstruction was imminent.

9. During the course of the meetings and communications more fully described in Paragraph 8 above, the defendants, as an inducement to purchase the defendants' securities, represented to Mr. Dennis that:

<sup>1</sup> "Defendants" hereinafter refers to Ivan K. Landreth, Thomas E. Landreth and Ivan K. Landreth, Jr.

(a) All of the equipment to be installed in the reconstructed mill was in good operating condition and suitable for use in the reconstructed mill;

(b) The value of the raw timber inventory on the premises of Landreth Timber I exceeded thirty thousand dollars (\$30,000);

(c) The structural steel required to complete reconstruction of the mill had been purchased and delivered;

(d) The cost to Mr. Dennis of completing reconstruction of the mill would not exceed one hundred fifty thousand dollars (\$150,000);

(e) Upon completion, the reconstructed mill would have the capacity to process two hundred thousand (200,000) board feet of lumber daily, operating on a double shift basis; and

(f) The Helle portion of the mill would be operative by the end of October, 1977, and the Maxi-Mill would be operative by the end of November, 1977.

10. On or about October 6, 1977, Mr. Dennis, acting in good faith and in reasonable reliance upon the representations and assurances of the defendants more fully described in Paragraph 9 above, entered into a "Stock Purchase Agreement" with the defendants pursuant to the terms of which Mr. Dennis, as an accommodation buyer, agreed to purchase, and the defendants agreed to sell, all of the outstanding shares of Landreth Timber I.

11. In the Stock Purchase Agreement, the defendants made numerous express representations to Mr. Dennis concerning the assets of the corporation, the physical assets of the mill, the reconstruction of the mill and the operating liabilities of the reconstructed mill. These representations are fully set forth in the Stock Purchase Agreement, but included, *inter alia*, (i) that the mill was being constructed with first-quality and suitable equipment in a workmanlike manner, (ii) that the mill, upon

completion, if properly operated, would produce an overrun of at least fifty percent (50%) of the presently accepted, so-called, "Standard Scribner Scale" for measuring logs, (iii) that all other equipment presently used in the mill was suitable for their designated purposes and in good operating condition, and (iv) that the financial representations contained in the exhibits to the Stock Purchase Agreement were true and correct.

12. On or about October 29, 1977, Phillip Cook, who had been retained by plaintiff upon the recommendation of Jack P. Branch, met with the defendant Ivan K. Landreth for the purpose of examining the facilities and equipment on the premises of Landreth Timber I and to review the progress of the reconstruction of the mill. Ivan K. Landreth restricted Mr. Cook's examination of the mill and its employees. During the course of that meeting, the defendant Ivan K. Landreth represented that:

(a) The equipment installed in the reconstructed mill was in good operating condition and capable of finishing and processing two hundred thousand (200,000) board feet of lumber daily, on a double shift schedule;

(b) The equipment not installed and required to complete reconstruction of the mill had been ordered and purchased and, when installed, would be capable of finishing and processing two hundred thousand (200,000) board feet of lumber daily, on a double shift schedule;

(c) The structural steel required to complete reconstruction of the mill, including the log deck to the Maxi-Mill, had been purchased and delivered;

(d) The yellow pine log inventory of Landreth Timber I had been purchased and delivered in the spring of 1977; and

(e) The completion of reconstruction of the mill was "on schedule," the schedule referred to being that war-



ranted in the Stock Purchase Agreement (see Paragraph 9(f) above).

13. On or about November 4, 1977, Mr. Dennis, in reliance upon the representations and assurances of the defendants, and in accordance with the terms and conditions of the Stock Purchase Agreement more fully described in Paragraphs 10 and 11 above, caused the B & D Company, Inc. (hereinafter "B & D Company") to be organized and incorporated under the laws of the State of Delaware. The B & D Company was organized for the purpose of acquiring the defendants' shares of stock in Landreth Timber I.

14. On or about November 7, 1977, Mr. Dennis assigned, and the B & D Company accepted assignment of the Stock Purchase Agreement governing the purchase of the shares of Landreth Timber I. Pursuant to the terms and conditions of the "Assignment and Acceptance of Assignment and Assumption" between Mr. Dennis and the B & D Company, the B & D Company succeeded to all of the rights and obligations of Mr. Dennis under the Stock Purchase Agreement.

15. On or about November 16, 1977, Mr. Dennis, as an officer and agent of the B & D Company, met with the defendant Ivan K. Landreth to affect the consummation of the purchase by B & D Company of all of the outstanding shares of Landreth Timber I. At that time, the defendant Ivan K. Landreth, acting for himself and as agent for the defendants Thomas E. Landreth and Ivan K. Landreth, Jr., again represented that upon completion of reconstruction of the mill, the equipment contained therein would have the capacity to process two hundred thousand (200,000) board feet of lumber daily. The defendant Ivan K. Landreth further represented that the cost to the B & D Company of completion of reconstruction of the mill would total approximately one hundred thirty-nine thousand dollars (\$139,000). Ivan K. Landreth also confirmed the warranties and repre-

sentations made in the Stock Purchase Agreement and specifically confirmed those set forth in Paragraph 9 above.

16. At the conclusion of the discussions more fully described in Paragraph 15 above, the B & D Company, in reliance upon the representations, assurances and warranties of the defendants, and the defendants entered into an "Assignment of, and Amendment to, Stock Purchase Agreement" (hereinafter "Amended Stock Purchase Agreement") pursuant to the terms of which the B & D Company purchased from the defendants all of the outstanding shares of stock of Landreth Timber I for the sum of three million nine hundred fifty-three thousand ninety-five dollars (\$3,953,095.00). The Amended Stock Purchase Agreement amended certain provisions of the Stock Purchase Agreement and confirmed, adopted and incorporated by reference, those terms, warranties, representations and conditions of the Stock Purchase Agreement, which were not expressly amended.

17. On November 17, 1977, Ivan K. Landreth, acting for himself and as attorney-in-fact for Thomas E. Landreth and Ivan K. Landreth, Jr., executed a Certificate, which certified, *inter alia*:

"(2) all of the representations and warranties made by the sellers and by the company to the buyer in the Stock Purchase Agreement are true and correct in all material respects as of the date of this Certificate, with the same force and effect as though such representations and warranties had been made as of the date hereof;"

18. In the Amended Stock Purchase Agreement, the defendants expressly represented, *inter alia*, that the accounts payable of Landreth Timber I on November 16, 1977, totalled three thousand five hundred dollars (\$3,500.00) and that the cost to the B & D Company of



completing reconstruction of the mill would total one hundred thirty-six thousand seven hundred eighty-nine dollars (\$136,789.00).

19. Upon execution of the Amended Stock Purchase Agreement, the B & D Company was merged with its newly acquired subsidiary Landreth Timber I; the shares of stock in the merged Landreth Timber I purchased from the defendants were cancelled; and the name of the surviving B & D Company was changed to the Landreth Timber Company, Inc. The surviving Landreth Timber II succeeded to all of the rights and obligations of the B & D Company under the Stock Purchase Agreement and Amended Stock Purchase Agreement.

20. The sale of all the outstanding shares of Landreth Timber I by the defendants to the B & D Company constituted a purchase and sale of securities within the meaning of sections 12(2) and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 771(2) and 77q(a); section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b); Rule 10b-5; and sections 21.20.010 and 21.20.430 of the Securities Act of Washington. RCW § 21.20.010 and § 21.20.430.

21. The oral and written warranties, representations and assurances made by the defendants and more fully described in Paragraphs 8 through 18 above constituted misrepresentations and untrue statements of material facts in violation of sections 12(2) and 17(a) of the Securities Act of 1933; and Section 10(b) of the Securities Exchange Act of 1934 in that:

(a) The defendants misrepresented the condition and capabilities of the equipment installed, and to be installed, in the reconstructed mill;

(b) The defendants misrepresented that the equipment and structural steel required to complete reconstruction of the mill had been purchased;

(c) The defendants understated the liabilities and obligations of Landreth Timber I and failed to disclose information concerning the actual liabilities and obligations of Landreth Timber I to the representatives of Mr. Dennis and the B & D Company.

(d) The defendants misrepresented the age, condition and value of the raw timber inventory of Landreth Timber I;

(e) The defendants misrepresented the cost to Mr. Dennis and the B & D Company of completing the reconstructed mill;

(f) The defendants misrepresented the capacity of the reconstructed mill to process and produce finished lumber products by substantially overstating the capacity of the mill; and

(g) The defendants knew that the representations and warranties which they had made were not true or, with the exercise of reasonable care could have determined that those representations were not true.

22. In further violation of sections 12(2) and 17(a) of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934, the defendants continually failed and omitted to state material facts concerning the cost of completion of the reconstructed mill; the condition and capabilities of the equipment installed and to be installed in the reconstructed mill; the liabilities and obligations of Landreth Timber I; the purchase and delivery of equipment and structural steel required to complete construction of the mill; the age, condition and value of the raw timber inventory of Landreth Timber I; and the capacity of the reconstructed mill to process and produce finished timber products. Each of the material facts which the defendants failed and omitted to state were necessary in order to make statements made, in the light of the circumstances under which they

were made, not misleading. The defendants knew of such omissions or, with the exercise of reasonable care would have known of such omissions.

23. The misrepresentations and omissions more fully described in Paragraphs 8-18 and 21-22 above were made in and by the use of instrumentalities of interstate commerce.

24. As a direct and proximate result of the good faith reliance of the plaintiff and its predecessors in interest upon the misrepresentations, assurances and warranties of the defendants, the plaintiff, through its predecessors, purchased the securities in issue from the defendants at a price which substantially exceeded the actual value of those securities at the time of sale in that:

(a) The equipment installed in the reconstructed mill was not in good operating condition and suitable for use in the reconstructed mill as represented by the defendants;

(b) Additional equipment and structural steel to be installed in the reconstructed mill had not been ordered and purchased as represented by the defendants;

(c) The liabilities and obligations of Landreth Timber I substantially exceeded those represented by the defendants;

(d) The cost of completing reconstruction of the mill substantially exceeded the cost represented by the defendants;

(e) The time required for completing reconstruction of the mill substantially exceeded that represented by the defendants;

(f) The capacity of the reconstructed mill was substantially less than that represented by the defendants; and

25. As a direct and proximate result of the good faith reliance of the plaintiff and its predecessors in interest

upon the misrepresentations, assurances and warranties of the defendants,

(a) The plaintiff Landreth Timber II has incurred substantial expense in refurbishing and replacing equipment which was not in accord with the representations of the defendants;

(b) The plaintiff Landreth Timber II has incurred substantial expense in purchasing equipment and structural steel for use in completing reconstruction of the mill which the defendants had represented had been purchased and delivered;

(c) The plaintiff Landreth Timber II has incurred substantial expense in satisfying the liabilities and obligations of Landreth Timber I which the defendants had concealed from the plaintiff and its predecessors in interest;

(d) The plaintiff Landreth Timber II has expended substantial amounts of time and has incurred substantial expense, in excess of the representations of the defendants, in completing the reconstruction of the mill;

(e) The plaintiff Landreth Timber II has lost business and profits which it otherwise would have realized from its business operations if the capacity of the reconstructed mill had been as represented by the defendants;

(f) The plaintiff Landreth Timber II has lost business and profits which it otherwise would have realized from the processing and sale of its raw timber inventory if the condition, age and value of its raw timber inventory had been as represented by the defendants; and

(g) The plaintiff Landreth Timber II has lost business and profits which it otherwise would have realized from its business operations if the mill would have been capable of completion within the "schedule" warranted and represented by the defendants; and



(h) The plaintiff Landreth Timber II sustained substantial loss on the sale of assets of the mill, which it otherwise would have realized if the representation of defendants had been true.

26. The plaintiff Landreth Timber II makes such tender of the Landreth Timber I shares which it purchased (including reissuance) as may be required by law.

### COUNT II

27. The plaintiff Landreth Timber II reallages and incorporates herein the allegations contained in Paragraphs 1 through 26 above.

28. The representations, assurances and omissions of the defendants more fully described above constituted misrepresentations, misstatements and omissions to state material facts in violation of section 21.20.010 of the Securities Act of Washington. RCW § 21.20.010 and § 21.20.430.

### COUNT III

29. The plaintiff Landreth Timber II realleges and incorporates herein the allegations contained in Paragraphs 1 through 26 above.

30. The misrepresentations, misstatements and omissions to state material facts more fully described above were knowingly made by the defendants in order to induce the plaintiff through Mr. Dennis and the B & D Company, to purchase securities from the defendants and constituted fraud, misrepresentations and deceit under the common law of the State of Washington.

### COUNT IV

31. The plaintiff Landreth Timber II realleges and incorporates herein the allegations contained in Paragraphs 1 through 26 above.

32. The plaintiff Landreth Timber II and its predecessors in interest satisfied each and every obligation imposed upon them by the terms and conditions of the Assignment of, and Amendment to, Stock Purchase Agreement.

33. The defendants have, as more particularly set forth in Paragraphs 7 through 24, breached the terms, warranties, representations and conditions of the Assignment of, and Amendment to, Stock Purchase Agreement.

34. By virtue of defendants' breaches of the Assignment of, and Amendment to, Stock Purchase Agreement, the plaintiff has incurred the expenses, losses and damages enumerated in Paragraph 25 above.

WHEREFORE, the plaintiff Landreth Timber Company, Inc. prays:

1. That, upon such tender of the securities in issue (including reissue thereof), as may be required by law, the Court enter judgment for the plaintiff against the defendants, and each of them for damages in the amount of the consideration paid to the defendants by the plaintiff and its predecessors in interest for those securities, together with interest;

2. That the Court enter judgment for the plaintiff against the defendants for additional damages to be proven at trial, but which are at the least two million five hundred thousand dollars (\$2,500,000.00), together with interest;

3. That the Court enter judgment for the plaintiff against the defendants for costs and reasonable attorneys' fees including, but without limitation, reasonable attorneys' fees incurred in the reissue and tender of the securities in issue; and

4. That the Court grant such other and further relief as it deems just and proper.

DATED this 1st day of November, 1978.

GRAHAM & DUNN

By /s/ GERALD T. PARKS, JR.  
Attorneys for Plaintiff,  
Landreth Timber Company, Inc.

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

\_\_\_\_\_  
Civil Action No. \_\_\_\_\_

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

v.

IVAN K. LANDRETH and JANE DOE LANDRETH, husband  
and wife, THOMAS E. LANDRETH and MARY DOE LAN-  
DRETH, husband and wife, IVAN K. LANDRETH, JR. and  
SARA DOE LANDRETH, husband and wife,  
*Defendants.*

[Filed Dec. 15, 1978]

\_\_\_\_\_  
FIRST AMENDED COMPLAINT AND JURY DEMAND

AMENDED COMPLAINT

1. This is an action by the plaintiff Landreth Timber Company, Inc., to recover for violations of sections 12(2) and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 771(2) and 17q(a); section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b); Rule 10b-5 of the Securities and Exchange Commission, 17 C.F.R. § 250.10b-5; sections 21.20.010 and 21.20.430 of the Securities Act of Washington, RCW § 21.20.010 and § 21.20.430; and the common law of the State of Washington arising from the sale of securities to the plaintiff Landreth Timber Company, Inc., by the defendants Ivan K. Landreth, Thomas E. Landreth, and Ivan K. Landreth, Jr.

## THE PARTIES

2. The plaintiff, the Landreth Timber Company, Inc. (hereinafter "Landreth Timber II"), is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Seattle, Washington. The plaintiff Landreth Timber II is, as a result of a merger, the survivor of the B & D Company, Inc., which, by the purchase of the securities at issue herein, acquired all of the outstanding shares of stock in the Landreth Timber Company, Inc., a corporation organized and existing under the laws of the State of Washington (hereinafter "Landreth Timber I"). The plaintiff Landreth Timber II is engaged in the business of logging, processing and finishing raw timber, and selling finished lumber products.

3. The defendant Ivan K. Landreth is a citizen of the State of Washington and resides in Oroville, Washington; all acts herein alleged to have been performed by, for or with the knowledge of Ivan K. Landreth were for and to his individual benefit and the benefit of the marital community composed of he and Jane Dole Landreth.

4. The defendant Thomas E. Landreth is a citizen of the State of California and resides in Irvine, California; all acts herein alleged to have been performed by, for or with the knowledge of Thomas E. Landreth were for and to his individual benefit and the benefit of the marital community composed of he and Mary Doe Landreth.

5. The defendant Ivan K. Landreth, Jr., is a citizen of the State of Washington and resides in Oroville, Washington; all acts herein alleged to have been performed by, for or with the knowledge of Ivan K. Landreth, Jr., were for and to his individual benefit and the benefit of the marital community composed of he and Sara Doe Landreth.

## JURISDICTION

6. The jurisdiction of this Court is invoked pursuant to section 22(a) of the Securities Act of 1933, as amended 15 U.S.C. 77v(a); and section 27 of the Securities Exchange Act of 1934, as amended 15 U.S.C. § 78aa. The jurisdiction of this Court is also invoked pursuant to 28 U.S.C. § 1331 as this action arises under the laws of the United States. The amount in controversy exceeds the sum or value of ten thousands dollars (\$10,000) exclusive of interest or costs. This Court has pendant jurisdiction over those claims arising under the laws of the State of Washington.

## COUNT I

7. On or about August 15, 1977, Jack P. Branch, as agent of the defendants Ivan K. Landreth, Thomas E. Landreth and Ivan K. Landreth, Jr.,<sup>1</sup> contacted Samuel S. Dennis (hereinafter "Mr. Dennis") and proposed that Mr. Dennis purchase from the defendants all of the outstanding shares of stock of Landreth Timber I. Landreth Timber I was, at all relevant times, engaged in the business of logging, processing and finishing raw timber, and selling finished lumber products.

8. On numerous and diverse occasions during the months of August and September, 1977, Mr. Dennis met, communicated and corresponded with the defendant Ivan K. Landreth and Jack P. Branch as agent for the defendants. During the course of those meetings and communications, the defendants informed Mr. Dennis that the mill used by Landreth Timber I to process and finish raw timber had been destroyed by fire in or about May, 1977, and therefore was not operative. The defendants further informed Mr. Dennis that the mill was being reconstructed; that the bulk of the equipment to be installed in

<sup>1</sup> "Defendants" hereinafter refers to Ivan K. Landreth, Thomas E. Landreth and Ivan K. Landreth, Jr.



the reconstructed mill had been purchased; and that the completion of reconstruction was imminent.

9. During the course of the meetings and communications more fully described in Paragraph 8 above, the defendants, as an inducement to purchase the defendants' securities, represented to Mr. Dennis that:

(a) All of the equipment to be installed in the reconstructed mill was in good operating condition and suitable for use in the reconstructed mill;

(b) The value of the raw timber inventory on the premises of Landreth Timber I exceeded thirty thousand dollars (\$30,000);

(c) The structural steel required to complete reconstruction of the mill had been purchased and delivered;

(d) The cost to Mr. Dennis of completing reconstruction of the mill would not exceed one hundred fifty thousand dollars (\$150,000);

(e) Upon completion, the reconstructed mill would have the capacity to process two hundred thousand (200,000) board feet of lumber daily, operating on a double shift basis; and

(f) The Helle portion of the mill would be operative by the end of October, 1977, and the Maxi-Mill would be operative by the end of November, 1977.

10. On or about October 6, 1977, Mr. Dennis, acting in good faith and in reasonable reliance upon the representations and assurances of the defendants more fully described in Paragraph 9 above, entered into a "Stock Purchase Agreement" with the defendants pursuant to the terms of which Mr. Dennis, as an accommodation buyer, agreed to purchase, and the defendants agreed to sell, all of the outstanding shares of Landreth Timber I.

11. In the Stock Purchase Agreement, the defendants made numerous express representations to Mr. Dennis

concerning the assets of the corporation, the physical assets of the mill, the reconstruction of the mill and the operating liabilities of the reconstructed mill. These representations are fully set forth in the Stock Purchase Agreement, but included, *inter alia*, (i) that the mill was being constructed with first-quality and suitable equipment in a workmanlike manner, (ii) that the mill, upon completion, if properly operated, would produce an overrun of at least fifty percent (50%) of the presently accepted, so-called, "Standard Scribner Scale" for measuring logs, (iii) that all other equipment presently used in the mill was suitable for their designated purposes and in good operating condition, and (iv) that the financial representations contained in the exhibits to the Stock Purchase Agreement were true and correct.

12. On or about October 29, 1977, Phillip Cook, who had been retained by plaintiff upon the recommendation of Jack P. Branch, met with the defendant Ivan K. Landreth for the purpose of examining the facilities and equipment on the premises of Landreth Timber I and to review the progress of the reconstruction of the mill. Ivan K. Landreth restricted Mr. Cook's examination of the mill and its employees. During the course of that meeting, the defendant Ivan K. Landreth represented that:

(a) The equipment installed in the reconstructed mill was in good operating condition and capable of finishing and processing two hundred thousand (200,000) board feet of lumber daily, on a double shift schedule;

(b) The equipment not installed and required to complete reconstruction of the mill had been ordered and purchased and, when installed, would be capable of finishing and processing two hundred thousand (200,000) board feet of lumber daily, on a double shift schedule;

(c) The structural steel required to complete reconstruction of the mill, including the log deck to the Maxi-Mill, had been purchased and delivered;

(d) The yellow pine log inventory of Landreth Timber I had been purchased and delivered in the spring of 1977; and

(e) The completion of reconstruction of the mill was "on schedule," the schedule referred to being that warranted in the Stock Purchase Agreement (see Paragraph 9(f) above).

13. On or about November 4, 1977, Mr. Dennis, in reliance upon the representations and assurances of the defendants, and in accordance with the terms and conditions of the Stock Purchase Agreement more fully described in Paragraphs 10 and 11 above, caused the B & D Company, Inc. (hereinafter "B & D Company") to be organized and incorporated under the laws of the State of Delaware. The B & D Company was organized for the purpose of acquiring the defendants' shares of stock in Landreth Timber I.

14. On or about November 7, 1977, Mr. Dennis assigned, and the B & D Company accepted assignment of the Stock Purchase Agreement governing the purchase of the shares of Landreth Timber I. Pursuant to the terms and conditions of the "Assignment and Acceptance of Assignment and Assumption" between Mr. Dennis and the B & D Company, the B & D Company succeeded to all of the rights and obligations of Mr. Dennis under the Stock Purchase Agreement.

15. On or about November 16, 1977, Mr. Dennis, as an officer and agent of the B & D Company, met with the defendant Ivan K. Landreth to affect the consummation of the purchase by B & D Company of all of the outstanding shares of Landreth Timber I. At that time, the defendant Ivan K. Landreth, acting for himself and as agent for the defendants Thomas E. Landreth and Ivan K. Landreth, Jr., again represented that upon completion of reconstruction of the mill, the equipment contained therein would have the capacity to process two hundred

thousand (200,000) board feet of lumber daily. The defendant Ivan K. Landreth further represented that the cost to the B & D Company of completion of reconstruction of the mill would total approximately one hundred thirty-nine thousand dollars (\$139,000). Ivan K. Landreth also confirmed the warranties and representations made in the Stock Purchase Agreement and specifically confirmed those set forth in Paragraph 9 above.

16. At the conclusion of the discussions more fully described in Paragraph 15 above, the B & D Company, in reliance upon the representations, assurances and warranties of the defendants, and the defendants entered into an "Assignment of, and Amendment to, Stock Purchase Agreement" (hereinafter "Amended Stock Purchase Agreement") pursuant to the terms of which the B & D Company purchased from the defendants all of the outstanding shares of stock of Landreth Timber I for the sum of three million nine hundred fifty-three thousand ninety-five dollars (\$3,953,095.00). The Amended Stock Purchase Agreement amended certain provisions of the Stock Purchase Agreement and confirmed, adopted and incorporated by reference, those terms, warranties, representations and conditions of the Stock Purchase Agreement, which were not expressly amended.

17. On November 17, 1977, Ivan K. Landreth, acting for himself and as attorney-in-fact for Thomas E. Landreth and Ivan K. Landreth, Jr., executed a Certificate, which certified, *inter alia*:

"(2) all of the representations and warranties made by the sellers and by the company to the buyer in the Stock Purchase Agreement are true and correct in all material respects as of the date of this Certificate, with the same force and effect as though such representations and warranties had been made as of the date hereof;"

18. In the Amended Stock Purchase Agreement, the defendants expressly represented, *inter alia*, that the ac-



counts payable of Landreth Timber I on November 16, 1977, totalled three thousand five hundred dollars (\$3,500.00) and that the cost to the B & D Company of completing reconstruction of the mill would total one hundred thirty-six thousand seven hundred eighty-nine dollars (\$136,789.00).

19. Upon execution of the Amended Stock Purchase Agreement, the B & D Company was merged with its newly acquired subsidiary Landreth Timber I; the shares of stock in the merged Landreth Timber I purchased from the defendants were cancelled; and the name of the surviving B & D Company was changed to the Landreth Timber Company, Inc. The surviving Landreth Lumber II succeeded to all of the rights and obligations of the B & D Company under the Stock Purchase Agreement and Amended Stock Purchased Agreement.

20. The sale of all the outstanding shares of Landreth Timber I by the defendants to the B & D Company constituted a purchase and sale of securities within the meaning of sections 12(2) and 17(a) of the Securities Act of 1933, 15 U.S.C. §§ 77l(2) and 77q(a); section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b); Rule 10b-5; and sections 21.20.010 and 21.20.430 of the Securities Act of Washington. RCW § 21.20.010 and § 21.20.430.

21. The oral and written warranties, representations and assurances made by the defendants and more fully described in Paragraphs 8 through 18 above constituted misrepresentations and untrue statements of material facts in violation of sections 12(2) and 17(a) of the Securities Act of 1933; and Section 10(b) of the Securities Exchange Act of 1934 in that:

(a) The defendants misrepresented the condition and capabilities of the equipment installed, and to be installed, in the reconstructed mill;

(b) The defendants misrepresented that the equipment and structural steel required to complete reconstruction of the mill had been purchased;

(c) The defendants understated the liabilities and obligations of Landreth Timber I and failed to disclose information concerning the actual liabilities and obligations of Landreth Timber I to the representatives of Mr. Dennis and the B & D Company.

(d) The defendants misrepresented the age, condition and value of the raw timber inventory of Landreth Timber I;

(e) The defendants misrepresented the cost to Mr. Dennis and the B & D Company of completing the reconstructed mill;

(f) The defendants misrepresented the capacity of the reconstructed mill to process and produce finished lumber products by substantially overstating the capacity of the mill; and

(g) The defendants knew that the representations and warranties which they had made were not true or, with the exercise of reasonable care could have determined that those representations were not true.

22. In further violation of sections 12(2) and 17(a) of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934, the defendants continually failed and omitted to state material facts concerning the cost of completion of the reconstructed mill; the condition and capabilities of the equipment installed and to be installed in the reconstructed mill; the liabilities and obligations of Landreth Timber I; the purchase and delivery of equipment and structural steel required to complete construction of the mill; the age, condition and value of the raw timber inventory of Landreth Timber I; and the capacity of the reconstructed mill to process and produce finished timber products. Each of the material facts which the defendants failed and omitted to state were



necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading. The defendants knew of such omissions or, with the exercise of reasonable care would have known of such omissions.

23. The misrepresentations and omissions more fully described in Paragraphs 8-18 and 21-22 above were made in and by the use of instrumentalities of interstate commerce.

24. As a direct and proximate result of the good faith reliance of the plaintiff and its predecessors interest upon the misrepresentations, assurances and warranties of the defendants, the plaintiff, through its predecessors, purchased the securities in issue from the defendants at a price which substantially exceeded the actual value of those securities at the time of sale in that:

(a) The equipment installed in the reconstructed mill was not in good operating condition and suitable for use in the reconstructed mill as represented by the defendants;

(b) Additional equipment and structural steel to be installed in the reconstructed mill had not been ordered and purchased as represented by the defendants;

(c) The liabilities and obligations of Landreth Timber I substantially exceeded those represented by the defendants;

(d) The cost of completing reconstruction of the mill substantially exceeded the cost represented by the defendants;

(e) The time required for completing reconstruction of the mill substantially exceeded that represented by the defendants;

(f) The capacity of the reconstructed mill was substantially less than that represented by the defendants; and

25. As a direct and proximate result of the good faith reliance of the plaintiff and its predecessors in interest upon the misrepresentations, assurances and warranties of the defendants,

(a) The plaintiff Landreth Timber II has incurred substantial expense in refurbishing and replacing equipment which was not in accord with the representations of the defendants;

(b) The plaintiff Landreth Timber II has incurred substantial expense in purchasing equipment and structural steel for use in completing reconstruction of the mill which the defendants had represented had been purchased and delivered;

(c) The plaintiff Landreth Timber II has incurred substantial expense in satisfying the liabilities and obligations of Landreth Timber I which the defendants had concealed from the plaintiff and its predecessors in interest;

(d) The plaintiff Landreth Timber II has expended substantial amounts of time and has incurred substantial expense, in excess of the representations of the defendants, in completing the reconstruction of the mill;

(e) The plaintiff Landreth Timber II has lost business and profits which it otherwise would have realized from its business operations if the capacity of the reconstructed mill had been as represented by the defendants;

(f) The plaintiff Landreth Timber II has lost business and profits which it otherwise would have realized from the processing and sale of its raw timber inventory if the condition, age and value of its raw timber inventory had been as represented by the defendants; and

(g) The plaintiff Landreth Timber II has lost business and profits which it otherwise would have realized from its business operations if the mill would have been capa-

ble of completion within the "schedule" warranted and represented by the defendants; and

(h) The plaintiff Landreth Timber II sustained substantial loss on the sale of assets of the mill, which it otherwise would have realized if the representation of defendants had been true.

26. The plaintiff Landreth Timber II makes such tender of the Landreth Timber I shares which it purchased (including reissuance) as may be required by law.

### COUNT II

27. The plaintiff Landreth Timber II realleges and incorporates herein the allegations contained in Paragraphs 1 through 26 above.

28. The representations, assurances and omissions of the defendants more fully described above constituted misrepresentations, misstatements and omissions to state material facts in violation of section 21.20.010 of the Securities Act of Washington. RCW § 21.20.010 and § 21.20.430.

### COUNT III

29. The plaintiff Landreth Timber II realleges and incorporates herein the allegations contained in Paragraphs 1 through 26 above.

30. The misrepresentations, misstatements and omissions to state material facts more fully described above were knowingly made by the defendants in order to induce the plaintiff, through Mr. Dennis and the B & D Company, to purchase securities from the defendants and constituted fraud, misrepresentations and deceit under the common law of the State of Washington.

### COUNT IV

31. The plaintiff Landreth Timber II realleges and incorporates herein the allegations contained in Paragraphs 1 through 26 above.

32. The plaintiff Landreth Timber II and its predecessors in interest satisfied each and every obligation imposed upon them by the terms and conditions of the Assignment of, and Amendment to, Stock Purchase Agreement.

33. The defendants have, as more particularly set forth in Paragraphs 7 through 24, breached the terms, warranties, representations and conditions of the Assignment of, and Amendment to, Stock Purchase Agreement.

34. By virtue of defendants' breaches of the Assignment of, and Amendment to, Stock Purchase Agreement, the plaintiff has incurred the expenses, losses and damages enumerated in Paragraph 25 above.

### JURY DEMAND

35. Pursuant to the provisions of F.R.C.P. 38, the plaintiff requests that this matter be tried to a jury.

WHEREFORE, the plaintiff Landreth Timber Company, Inc. prays:

1. That, upon such tender of the securities in issue (including reissue thereof), as may be required by law, the Court enter judgment for the plaintiff against the defendants, and each of them for damages in the amount of the consideration paid to the defendants by the plaintiff and its predecessors in interest for those securities, together with interest;

2. That the Court enter judgment for the plaintiff against the defendants for additional damages to be proven at trial, but which are at the least two million five hundred thousand dollars (\$2,500,000.00), together with interest;

3. That the Court enter judgment for the plaintiff against the defendants for costs and reasonable attorneys' fees including, but without limitation, reasonable attor-

neys' fees incurred in the reissue and tender of the securities in issue; and

4. That the Court grant such other and further relief as it deems just and proper.

DATED this 15th day of December, 1978.

GRAHAM & DUNN

By /s/ GERALD T. PARKS, JR.

By /s/ R. BRUCE JOHNSTON

Attorneys for Plaintiff,  
Landreth Timber Company, Inc.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Civil Action No. C78-663S

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

v.

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR., and KATHLEEN LANDRETH, husband and wife,  
*Defendants.*

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR., and KATHLEEN LANDRETH, husband and wife,  
*Counterclaim  
Plaintiffs,*

v.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim  
Defendants.*

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTER-CLAIMS OF DEFENDANTS IVAN K. LANDRETH, AND LUCILLE LANDRETH, HUSBAND AND WIFE; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR., AND KATHLEEN LANDRETH, HUSBAND AND WIFE**

**DEMAND FOR JURY**

Defendants Ivan K. Landreth and Lucille Landreth, husband and wife, Thomas E. Landreth, and Ivan K. Landreth, Jr., and Kathleen Landreth, husband and wife



(hereinafter all "defendants") for answer to the First Amended Complaint of plaintiff Landreth Timber Company, Inc. (hereinafter "Landreth Timber II"), admit, deny, and allege as follows:

1. Answering paragraph 1 of the Complaint, defendants deny that such alleged violations have occurred and, therefore, deny the existence of jurisdiction.

2. Answering paragraph 2 of the Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of said paragraph and, therefore, deny the same.

3. Answering paragraph 3 of the complaint, defendants admit that Ivan K. Landreth is a citizen of the State of Washington residing in Redmond, Washington. Answering the balance of paragraph 3, defendants deny the same.

4. Answering paragraph 4 of the Complaint, defendants admit that Thomas E. Landreth is a citizen of the State of California. Answering the balance of paragraph 4, defendants deny the same.

5. Answering paragraph 5 of the Complaint, defendants admit that Ivan K. Landreth, Jr., is a citizen of the State of Washington, and is married to Kathleen Landreth. Answering the balance of paragraph 5, defendants deny the same.

6. Answering paragraph 6 of the Complaint, defendants deny the existence of jurisdiction.

7. Answering paragraph 7 of the Complaint, defendants deny that Jack P. Branch acted as defendants' agent, and specifically allege that Branch acted at all times as an agent of Samuel S. Dennis (hereinafter "Dennis") and plaintiff. Defendants are without knowledge or information sufficient to form a belief as to when Mr. Branch contacted Dennis, and therefore, deny said allegation. Defendants admit that the Landreth Timber

Company, Inc., as it existed prior to January 10, 1978, during defendants' ownership thereof (hereinafter "Landreth Timber I"), was at various times engaged in the business of logging, processing, and finishing raw timber and selling finished lumber products. Answering the balance of paragraph 7, defendants deny the same.

8. Answer (sic) paragraph 8 of the Complaint, defendants admit that from August through October, 1977, prior to execution of the Stock Purchase Agreement, Ivan K. Landreth (hereinafter "Landreth") met, communicated, and corresponded with Dennis or his agents. Defendants deny that Jack P. Branch acted as agent for defendants. Defendants allege that during the course of meetings, and communications, Landreth informed Dennis that the mill used by Landreth Timber I to process and finish raw timber had been destroyed by fire on or about May, 1977, was not operative, and was in the process of being reconstructed. Landreth told Dennis that arrangements had been made to acquire the bulk of the equipment for reconstruction of the mill, and requested that Dennis and his representatives contact the manufacturers of said equipment regarding the production capabilities, availability, installation, and completion of the equipment and the mill facility. Answering the balance of paragraph 8, defendants deny the same.

9. Answering paragraph 9 of the Complaint, defendants state that during the course of the meetings and communications occurring from August through October, 1977, prior to execution of the Stock Purchase Agreement, Landreth provided the following information to Dennis:

(a) With respect to the allegations of paragraph 9(a) of the Complaint, Landreth stated that the equipment installed in the mill, as of the date of the Stock Purchase Agreement dated October 6, 1977 (hereinafter the "Stock Purchase Agreement"), was suitable for its purpose and in good operating condition, normal wear and tear excepted. Landreth refused to provide a warranty concern-

ing equipment to be used in the mill operation and informed Dennis that additional equipment would be required if Dennis wanted to expand operations beyond those contemplated by Landreth. Landreth requested that Dennis perform his own investigation of the suitability, condition, and capability of the equipment.

(b) With respect to the allegations of paragraph 9(b) of the Complaint, defendants deny that such alleged representation was made, and allege that plaintiff retained its own appraisal and valuation experts to determine the amount of the raw timber inventory on the premises.

(c) With respect to the allegations of paragraph 9(c) of the Complaint, Landreth told Dennis that arrangements had been made for obtaining most of the structural steel required for reconstruction of the mill. Landreth did not state that most of the structural steel required to complete construction had been purchased and delivered.

(d) With respect to the allegations of paragraph 9(d) of the Complaint, Landreth told Dennis that his estimate of the cost of completing the mill as of that time, according to the capabilities and configuration of the mill as then planned and designed, would be approximately \$150,000, but Landreth refused to provide any warranty concerning this item and requested that Dennis perform his own investigation of the costs of completion.

(e) With respect to the allegations of paragraph 9(e) of the Complaint, Landreth orally told Dennis that he expected 80,000 to 100,000 board feet of lumber to be produced per shift by the mill facility as then planned and designed, but Landreth refused to provide any warranty concerning this item and requested that Dennis perform his own investigation of the capability of the mill.

(f) With respect to the allegations of paragraph 9(f) of the Complaint, Landreth told Dennis that he estimated that the Helle portion of the mill would be capable of operation by about October 31, 1977. In addition, Lan-

dreth stated that Warren and Brewster estimated completion of delivery of the Maxi-Mill equipment by the end of November, which would allow the Maxi-Mill to be operative by the end of December. Such projections at that time represented the best available estimate of the time of completion, and Landreth requested that Dennis contact the manufacturer of the Maxi-Mill equipment concerning the date of its availability.

Other than as specifically stated above, defendants deny that any warranties, guarantees, or further representations were provided concerning the above items. Answering the balance of paragraph 9, defendants deny the same.

10. Answering paragraph 10 of the Complaint, defendants state that on October 6, 1977, defendants and Landreth Timber I entered into the Stock Purchase Agreement with Dennis as amended on November 16, 1977. Answering the balance of paragraph 10, defendants deny the same.

11. Answering paragraph 11 of the Complaint, defendants state only that Landreth made such statements as are contained in the Stock Purchase Agreement on the terms set forth therein. Answering the balance of paragraph 11, defendants deny the same.

12. Answering paragraph 12 of the Complaint, defendants state that Landreth met with Phillip Cook (hereinafter "Cook") on or about October 29, 1977. Defendants deny that Landreth in any way restricted Cook's examination of the mill and its employees, beyond requesting that Cook not represent to such employees that he was manager prior to completion of the sale of Landreth Timber I, which had not yet closed as of the date of Cook's visit. Landreth provided the following information to Cook during that meeting:

(a) With respect to the allegations of paragraph 12(a) of the Complaint, Landreth told Cook that the used equip-



ment then installed in the reconstructed mill was either in good operating condition or was in the process of being reconditioned. Landreth stated that he believed that the mill facility, as then planned and designed, would be capable of producing approximately 80,000 to 100,000 board feet of lumber per shift.

(b) With respect to the allegations of paragraph 12(b) of the Complaint, defendants deny that Landreth stated that all equipment not installed and required to complete reconstruction of the mill had been ordered and purchased. Landreth stated that he believed that the mill facility, as then planned and designed, would be capable of producing approximately 80,000 to 100,000 board feet of lumber per shift.

(c) With respect to the allegations of paragraph 12(c) of the Complaint, defendants deny that Landreth told Cook that all structural steel required to complete reconstruction of the mill had been purchased and delivered.

(d) With respect to the allegations of paragraph 12(d) of the Complaint, defendants deny that any statement or representation was made concerning the date of purchase and delivery of the yellow pine log inventory, beyond stating to Cook that most of the log inventory in the yard had arrived before the fire occurring in May, 1977.

(e) With respect to the allegations of paragraph 12(e) of the Complaint, defendants deny that any warranty was made concerning the date of completion of the reconstruction of the mill. Landreth stated only that it would be at least until December before certain items of necessary equipment could be obtained based upon Warren and Brewster's most recent estimates. Landreth encouraged Cook to investigate the facts and circumstances regarding availability of equipment and completion of the mill.

Defendants deny that any warranties, guarantees, or further representations were provided concerning the

above items. Answering the balance of paragraph 12, defendants deny the same.

13. Answering paragraph 13 of plaintiff's Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of said paragraph, and therefore, deny the same.

14. Answering paragraph 14 of plaintiff's Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of said paragraph, and therefore, deny the same.

15. Answering paragraph 15 of plaintiff's Complaint, defendants admit that Landreth met with Dennis on or about November 16, 1977, in order to effect consummation of the purchase and sale of the shares of Landreth Timber I. Landreth acted for himself and as agent for defendants Thomas E. Landreth and Ivan K. Landreth, Jr., at such meeting. Defendants state only that such statements and representations were made by Landreth as are contained in the Stock Purchase Agreement. Answering the balance of paragraph 15, defendants deny the same.

16. Answering paragraph 16 of plaintiff's Complaint, defendants admit that B&D Company entered into an "Assignment of, and Amendment to, Stock Purchase Agreement" on November 16, 1977 (hereinafter "Amended Stock Purchase Agreement") on the basis and according to the terms set forth in that Amended Stock Purchase Agreement. Answering the balance of paragraph 16, defendants deny the same.

17. Answering paragraph 17 of plaintiff's Complaint, defendants admit that on or about November 17, 1977, Landreth, acting for himself and as attorney-in-fact for Thomas E. Landreth and Ivan K. Landreth, Jr., executed a certain Certificate which contains the terms and provisions stated and incorporated in that particular docu-



ment. Answering the balance of paragraph 17, defendants deny the same.

18. Answering paragraph 18 of plaintiff's Complaint, defendants deny that the Armed Stock Purchase Agreement stated that the accounts payable to Landreth Timber I as of November 16, 1977, were \$3,500. Defendants deny that any representation, guarantee, or warranty was made concerning the cost to B&D Company of completing reconstruction of the mill. Answering the balance of paragraph 18, defendants deny the same.

19. Answering paragraph 19 of plaintiff's Complaint, defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of said paragraph, and therefore, deny the same.

20. Answering paragraph 20 of plaintiff's Complaint, defendants deny the same.

21. Answering paragraph 21 of plaintiff's Complaint, defendants deny the same.

22. Answering paragraph 22 of plaintiff's Complaint, defendants deny the same.

23. Answering paragraph 23 of plaintiff's Complaint, defendants deny the same.

24. Answering paragraph 24 of plaintiff's Complaint, defendants deny the same.

25. Answering paragraph 25 of plaintiff's Complaint, defendants deny the same.

26. Answering paragraph 26 of plaintiff's Complaint, defendants deny that Landreth Timber II has made any tender at any time or in any manner of the shares which it purchased from defendants. Further answering paragraph 26 of plaintiff's Complaint, defendants deny that Landreth Timber II now has the capacity or power to make such tender.

27. Answering paragraph 27 of plaintiff's Complaint, defendants reallege and incorporate the admissions, denials, and allegations contained in paragraphs 1 through 26 above.

28. Answering paragraph 28 of plaintiff's Complaint, defendants deny the same.

29. Answering paragraph 29 of plaintiff's Complaint, defendants reallege and incorporate the admissions, denials, and allegations contained in paragraphs 1 through 26 above.

30. Answering paragraph 30 of plaintiff's Complaint, defendants deny the same.

31. Answering paragraph 31 of plaintiff's Complaint, defendants reallege and incorporate the admissions, denials, and allegations contained in paragraphs 1 through 26 above.

32. Answering paragraph 32 of plaintiff's Complaint, defendants deny the same.

33. Answering paragraph 33 of plaintiff's Complaint, defendants deny the same.

34. Answering paragraph 34 of plaintiff's Complaint, defendants deny the same.

35. Answering paragraphs 1 through 4 of plaintiff's prayer for relief, defendants deny that such damages have been incurred, and further allege that there is no lawful basis for the recovery of such damages.

36. Further answering plaintiff's Complaint, defendants deny each and every other allegation not previously answered herein.

#### AFFIRMATIVE DEFENSES

By way of further answer as an affirmative defense to plaintiff's Complaint, and without prejudice to any other position taken herein, defendants allege as follows:

37. *Failure to Effect Service of Process and Properly Commence Suit.* Plaintiff has failed to effect service of process on all or a portion of the defendants herein and has failed to properly commence suit.

38. *Improper Value.* This action cannot be properly maintained in the United States District Court for the Western District of Washington.

39. *Lack of Standing and Capacity.* Plaintiff was never in privity with defendants, and plaintiff recently sold its stock in Landreth Timber II. For these and other reasons, plaintiff lacks the requisite standing and capacity to pursue its alleged claims against defendants.

40. *Failure to State a Claim Upon Which Relief Can be Granted.* Plaintiff has failed to state any claim in its Complaint upon which relief can be granted.

41. *Lack of any Warranty or Guaranty Concerning the Timing of Completion, Production Capability, or Eventual Cost of the Mill Facility.* There were extensive negotiations between the parties prior to execution of the Stock Purchase Agreement. While there are many warranties, guarantees, and representations by both parties contained in the Stock Purchase Agreement, defendants did not make any warranty concerning capital expenditures, the cost of completion, the timing of completion, or the production capabilities of the mill facility. Any statements regarding such items were made after extensive negotiations solely upon defendants' "information and belief," as opposed to any express or implied warranty on the part of defendants.

42. *Disclaimer of any Alleged Warranties Concerning the Mill Facility.* In the negotiations prior to execution of the Stock Purchase Agreement, defendants, both orally and in writing, expressly disclaimed the existence of any warranties or guarantees concerning capital expenditures, the cost of completing the mill facility, the timing of completion, or its production capabilities.

43. *Lack of Intent.* Intent to deceive, or reckless disregard of known facts, by defendants is a condition precedent to any potential liability under federal and state securities laws as alleged in plaintiff's Complaint. Defendants did not know, and in the exercise of reasonable care could not have known, of any alleged misrepresentation or omission.

44. *Lack of a Duty to Plaintiff and Defendants' Compliance with Applicable Standards of Care.* Defendants allege that they were not in any fiduciary relationship with plaintiff and deny that defendants owed any duty to plaintiff. Defendants further allege that they complied with all applicable standards of care.

45. *Negligence of Plaintiff.* Plaintiff and its agents were negligent in numerous respects, including, but not limited to, its investigation of the assets and liabilities of Landreth Timber I, the construction of the mill facility, the management of the mill facility, and in the production and use of certain appraisal, accounting, and other information used in the transaction. The claims and damages of plaintiff are totally or partially barred by plaintiff's own negligence, for defendants were not the proximate cause of plaintiff's alleged injury.

46. *Assumption of the Risk by Plaintiff.* Plaintiff entered into the Stock Purchase Agreement only after an extensive and lengthy investigation by appraisal, legal, and accounting personnel concerning the assets and liabilities of Landreth Timber I. Plaintiff had complete access to all of the records and operations of defendants in making such investigation and receiving such disclosure. Prior to closing on January 10, 1978, plaintiff knew of, and negotiated concerning, the claims which now form the basis of plaintiff's Complaint. The continued truth and correctness of defendants' representations were a condition precedent to closing under paragraph 5(d) and other provisions of the Stock Purchase



Agreement. After successfully negotiating an increase in the amount of the escrow because of the existence of certain claims now alleged by plaintiff, plaintiff then elected to proceed with closing. Plaintiff assumed as a matter of law and fact the risk of the matters now alleged in its Complaint.

47. *Latches.* Plaintiff knew of the existence of the claims which it has alleged in its Complaint prior to the closing of the transaction (hereinafter "closing") on January 10, 1978. Such alleged claims were discussed and taken into account in negotiations between the parties, including, but not limited to, those negotiations leading to the execution of the Amended Escrow Agreement. Plaintiff's failure to notify defendants and reassert such claims until shortly before commencement of this litigation constitutes laches, barring plaintiff's claims.

48. *General Estoppel and Waiver.* By its actions and omissions, plaintiff has otherwise waived and is estopped from asserting, the claims contained in its Complaint.

49. *Waiver and Estoppel: Plaintiff's Decision to Close the Transaction Despite Defendants' Alleged Non-Compliance With Conditions Precedent Under the Stock Purchase Agreement.* The continued correctness of defendants' representations and warranties, and the lack of changes in the financial condition of Landreth Timber I, were conditions precedent to closing under paragraphs 5(b), 5(d), and other provisions of the Stock Purchase Agreement. Prior to closing on January 10, 1978, plaintiff knew of, and negotiated concerning, the alleged breaches and misrepresentations contained in its Complaint. After negotiating an increase in the escrow, plaintiff exercised its option under paragraph 7(b) of the Stock Purchase Agreement to proceed with closing of the transaction. Plaintiff has waived, and is estopped from asserting, the claims now raised in its Complaint.

50. *Agency of Plaintiff's Accounting, Appraisal, and Other Personnel: Estoppel and Waiver.* Plaintiff employed certain investigative accountants, appraisers, and other personnel who became agents of plaintiff in connection with the purchase of the stock of Landreth Timber I and the events complained of in plaintiff's Complaint. Plaintiff availed itself of the complete disclosure provided by defendants, and plaintiff's agents actually participated and assisted in the preparation of financial, appraisal, and related data ultimately adopted, in whole or in part, by the parties in the Stock Purchase Agreement. Plaintiff's claims are barred by estoppel and waiver.

51. *Waiver: Election of Remedies.* Under paragraph 7(b) and other provisions of the Stock Purchase Agreement, plaintiff's remedies, in the event of an alleged default by defendants, were either (1) to waive default and require performance, or (2) to terminate the Stock Purchase Agreement. With full knowledge of the claims which it now asserts, plaintiff elected to waive the alleged default and proceeded to close the transaction on January 10, 1978, barring plaintiff's claims herein.

52. *Limitation of Remedies.* Under paragraph 7(b) and other provisions of the Stock Purchase Agreement, plaintiff's remedies, in the event of default, were either (1) to waive default and require performance, or (2) to terminate the Stock Purchase Agreement. Plaintiff selected neither of these options, and instead, has sold its stock and commenced this litigation, barring the claims asserted and remedies sought in plaintiff's Complaint.

53. *Limitation of Liability.* Under paragraph 7(b) and other provisions of the Stock Purchase Agreement, defendants' liability for the alleged claims asserted by plaintiff is limited to the amount presently held in escrow.

54. *Mutual Mistake.* All available information concerning projected costs of completion, timing of comple-



tion, production capabilities of the mill facility, and the assets and liabilities of Landreth Timber I were made fully available to plaintiff prior to entry into the Stock Purchase Agreement and closing. To the extent that actual costs, completion, production capabilities, and the assets and liabilities of Landreth Timber I deviated from the facts made known by plaintiff's own investigation, known by plaintiff, and/or disclosed by defendants, then the parties' joint reliance on such facts, as of the date of entry into the Stock Purchase Agreement and closing, constitutes a mutual mistake.

55. *Impossibility.* To the extent that eventual costs of completion, timing of completion, and the production capabilities of the mill facility deviated from those discovered by plaintiff and disclosed by defendants, then defendants allege that it was impossible to comply with such cost, time, or production capability estimates.

56. *Failure of Plaintiff to Comply With Conditions Precedent to Suit Under the Escrow Agreement.* Plaintiff has failed to comply with conditions precedent to making claims under the Escrow Agreement dated November 17, 1977 (hereinafter the "Escrow Agreement"), as amended on January 10, 1978 (hereinafter the "Amended Escrow Agreement"), including, but not limited to, failing to provide actual timely and complete notice of claims pursuant to the requirement of the Escrow Agreement, and failing to demonstrate that an actual bona fide dispute exists under the terms of the Escrow Agreement.

57. *Lack of Reliance by Plaintiff: Plaintiff's Actual Knowledge of Costs of Construction, Timing of Completion, Production Capability, and Other Circumstances Regarding Completion of the Mill.* Plaintiff was furnished, and availed itself of, a complete opportunity to investigate the assets and liabilities of Landreth Timber I, and the matters now claimed in its Complaint.

Plaintiff was encouraged to, and did, contact the manufacture of certain equipment used in the mill facility, and received complete information concerning the cost, timing of delivery of equipment, and production capabilities of the mill. Plaintiff relied on its own investigative efforts, not any alleged representations of defendants, in entering into this transaction. Defendants' representations made on "information and belief" were not material to plaintiff's decision to purchase Landreth Timber I, nor did plaintiff rely on said representations. Plaintiff had actual knowledge of the circumstances alleged in its Complaint, barring the claims which it has asserted herein.

58. *Compromise, Accord, and Satisfaction.* The claims now made by plaintiff were the subject of negotiations between the parties and were compromised and satisfied prior to closing.

59. *Statute of Frauds.* To the extent plaintiff's claims depend upon certain oral statements and representations not contained in the Stock Purchase Agreement, the Amendment to the Stock Purchase Agreement, the Escrow Agreement, the Amended Escrow Agreement, and such other written documents as may have become part of the agreement between the parties, then such claims are barred by the statute of frauds.

60. *Admission by Plaintiff Concerning the Value of the Assets and Liabilities of Landreth Timber I.* Defendants allege that the participation and production by plaintiff and its agents of accounting and appraisal data which became the agreed valuation of the assets and liabilities of Landreth Timber I in the Stock Purchase Agreement, constitute an admission by plaintiff concerning the value of such assets and liabilities, and certain other matters complained of in plaintiff's complaint, barring plaintiff's claims.

61. *Plaintiff's Failure to Mitigate Damages.* Plaintiff has failed to appropriately reduce and mitigate any

alleged damages after plaintiff obtained actual knowledge of the matters complained of in the Complaint. By refusing to meet with Landreth, terminating Landreth's employment agreement, by not asserting these claims until after it had sold its ownership interest in Landreth Timber II, and by its other actions and omissions, plaintiff also has deprived defendants of the opportunity to mitigate alleged damages.

62. *Plaintiff's Failure to Tender Shares to Defendants.* To the extent plaintiff's claims are based on an alleged rescission or tender offer to defendants, defendants deny that any such offer or tender has been made.

63. *Plaintiff's Changes in Design and Management Incurring Additional Costs.* After entry into the Stock Purchase Agreement, plaintiff made certain changes and alterations in the plans for construction of the mill as anticipated by defendants. Such changes in construction plans included the acquiring of additional equipment, the alteration of the design of the mill facility, different decisions in manufacture of timber products, and other management changes, all resulting in additional expenses for which defendants are not responsible.

64. *Bad Faith of Plaintiff.* Defendants incorporate by reference paragraphs 37 through 63 herein, and allege that plaintiff has acted in bad faith, barring plaintiff's claims.

### COUNTERCLAIM

By way of further answer and as a counterclaim to plaintiff's Complaint, and without prejudice to any other position taken herein, defendants allege as follows:

#### *Parties*

65. *Counterclaim Plaintiff:* Counterclaim plaintiff Ivan K. Landreth is a citizen of the State of Washington residing at 6515—159th N.E., Redmond, Washington.

66. Counterclaim plaintiff Thomas E. Landreth is a citizen of the State of California and resides at 205 Second Street, Hermosa Beach, California.

67. Counterclaim plaintiff Ivan K. Landreth, Jr., is a citizen of the State of Washington and resides at 12316 N. E. 68th Place, Kirkland, Washington.

68. *Counterclaim Defendant:* Counterclaim defendant Landreth Timber Company, Inc. ("Landreth Timber II"), on information and belief, is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in Seattle, Washington.

#### *Jurisdiction*

69. This Court has pendant jurisdiction over these counterclaims under the claim asserted in plaintiff's Complaint and under the Uniform Declaratory Judgments Act, RCW 7.24.010.

#### *Stock Purchase Agreement*

70. Following several months of negotiations, on October 6, 1977, counterclaim plaintiffs entered into a Stock Purchase Agreement with Samuel S. Dennis III ("Dennis") of Newton, Massachusetts.

71. Under the Stock Purchase Agreement, counterclaim plaintiffs agreed to sell and Dennis agreed to buy all 500 shares of common stock of Landreth Timber Company, Inc. ("Landreth Timber I"), for a total purchase price of \$3,400,000.

#### *Assignment of, and Amendment to, Stock Purchase Agreement*

72. On November 16, 1977, counterclaim plaintiffs, Dennis, and B&D Company, Inc. ("B&D") entered into an Assignment of, and Amendment to, Stock Purchase Agreement dated October 6, 1977 ("Amended Stock Purchase Agreement").



73. Under the Amended Stock Purchase Agreement, B&D was substituted for Dennis as buyer under the Stock Purchase Agreement. In addition, certain adjustments were made in the total purchase price and the payment schedule.

*Escrow Agreement*

74. On November 17, 1977, counterclaim plaintiffs and B&D entered into an Escrow Agreement ("Escrow Agreement") as anticipated by the Stock Purchase Agreement and Amended Stock Purchase Agreement.

75. Paragraph 4 of the Amended Stock Purchase Agreement provides that \$50,000 of the funds paid on November 17, 1977, and \$100,000 of the funds payable on January 10, 1978, shall be deposited with an escrow agent as security for the accuracy of the representations and warranties and the performance of the covenants made by the sellers under the Stock Purchase Agreement. Under the Escrow Agreement, Seattle-First National Bank was appointed as escrow agent. If the buyer is damaged as a result of a breach by the sellers of covenants, representations, or warranties in the Stock Purchase Agreement as amended, then the buyer has a right to seek reimbursement from the escrow fund. If the buyer and sellers cannot mutually agree on the existence and amount of damage, the escrow agent is instructed to hold the funds pending a final decision by either arbitration or a court of competent jurisdiction.

*Amendment to Escrow Agreement*

76. On January 10, 1978, counterclaim plaintiffs and Landreth Timber II entered into an "Amendment to Escrow Agreement" ("Amended Escrow Agreement"), amending the Escrow Agreement dated November 17, 1977. The Amended Escrow Amendment increased the escrow fund from \$150,000 to a total of \$300,000. This additional escrow fund was subject to all of the terms and conditions of the original Escrow Agreement.

**FIRST CAUSE OF ACTION:  
ACTION FOR DECLARATORY JUDGMENT**

77. Counterclaim plaintiffs reallege paragraphs 65 through 76 above.

78. Under paragraph 2.1 of the Escrow Agreement, the escrow fund is intended to secure the buyer against damages or losses resulting from any breach of representations and warranties or defaults in the performance by the sellers and Landreth Timber I of the Stock Purchase Agreement and the Amended Stock Purchase Agreement.

79. Under paragraph 2.2 of the Escrow Agreement, if the buyer and sellers cannot mutually agree upon such damage or loss, if any, the agent shall continue to hold the escrow funds until the rights of the parties have been agreed upon between the buyer and the sellers, or until the rights of the parties have been finally determined by arbitration pursuant to RCW 7.04 or by a court of competent jurisdiction.

80. Counterclaim plaintiffs and Landreth Timber I have not defaulted on any of their covenants and agreements contained in the Stock Purchase Agreement or the Amended Stock Purchase Agreement, nor have they breached any of their representations and warranties contained in the Stock Purchase Agreement and the Amended Stock Purchase Agreement. Counterclaim plaintiffs seek a declaratory judgment pursuant to RCW 7.24 that no such default or breach has occurred.

**SECOND CAUSE OF ACTION:  
MALICIOUS PROSECUTION**

81. Counterclaim plaintiffs realleges (sic) paragraphs 65 through 80 above.

82. Counterclaim defendant instituted this action with knowledge that the allegations set forth in plaintiff's



Complaint were false, unfounded, malicious, and without probable cause, in violation of RCW 4.24.350.

83. As a direct and proximate result of plaintiff's action, counterclaim plaintiffs have suffered damage, including harm to their reputation, emotional distress, injury to their business, humiliation, and costs and attorneys' fees incurred in defending this lawsuit.

### PRAYER FOR RELIEF

WHEREFORE, counterclaim plaintiffs pray for judgment against the counterclaim defendant as follows:

1. That plaintiff's claim be dismissed with prejudice and without cost;
2. That this Court enter a judgment declaring that counterclaim plaintiffs and Landreth Timber I have not defaulted in the performance of any of their covenants and agreements contained in the Stock Purchase Agreement or the Amended Stock Purchase Agreement and have not breached any of their representations or warranties contained in the SPA or SPA Amendment;
3. That counterclaim plaintiffs be awarded damages for humiliation, emotional distress, harm to their business, and injury to their reputation, all as a result of plaintiff's action in filing this suit;
4. That counterclaim plaintiffs be awarded their expenses, costs, and reasonable attorneys' fees incurred herein; and
5. That counterclaim plaintiffs be awarded such other and further relief as the Court deems just and proper.

### DEMAND FOR JURY

Defendants herein respectfully demand a jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

DATED this — day of December, 1978.

BOGLE & GATES

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JAMES A. SMITH, JR.

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GUY P. MICHELSON

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PATRICIA H. CHAR

Attorneys for Defendants/  
Counterclaim Plaintiffs

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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Civil Action No. C78-663S

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

v.

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and  
wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR.,  
and KATHLEEN LANDRETH, husband and wife,  
*Defendants.*

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IVAN K. LANDRETH and LUCILLE LANDRETH, husband and  
wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR.,  
and KATHLEEN LANDRETH, husband and wife,  
*Counterclaim  
Plaintiffs,*

v.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim  
Defendant.*

[Filed Jan. 15, 1979]

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**REPLY TO DEFENDANTS' COUNTERCLAIMS**

Plaintiff LANDRETH TIMBER COMPANY, INC., a Delaware corporation ("Landreth Timber II"), makes the following reply to defendants' counterclaims set forth in paragraphs 65 through 83 of their "Answer, Affirmative Defenses, and Counterclaims . . ." on file herein ("counterclaims"):

**REPLY**

Landreth Timber II replies to the counterclaims as follows:

**1. Admissions**

(a) Landreth Timber II admits paragraphs 65 through 68 of the counterclaims to the extent, but only to the extent, that the allegations were true at the time the counterclaims were filed.

(b) Landreth Timber II admits paragraph 69 to the extent, but only to the extent, that it may be construed as alleging that this court has jurisdiction to determine the rights of the parties to this action to the escrow funds held by Seattle-First National Bank pursuant to the "Escrow Agreement" and "Amendment to Escrow Agreement" identified below.

(c) Landreth Timber II admits paragraphs 70, 71, 72, 73, 74, 75, 76, 78 and 79 of the counterclaims to the extent, but only to the extent, that they contain averments that: (i) Samuel S. Dennis, 3d ("Dennis") and defendants entered into a "Stock Purchase Agreement" dated October 6, 1977; (ii) that Dennis, B & D Company, Inc. ("B & D") (to which Landreth Timber II is the successor) and defendants entered into an "Assignment of, and Amendment to, Stock Purchase Agreement Dated October 6, 1977" ("amended Stock Purchase Agreement") on November 16, 1977; (iii) that B & D and defendants entered into an "Escrow Agreement" on November 17, 1977; (iv) that Landreth Timber II and defendants entered into an "Amendment to Escrow Agreement" on January 10, 1977; and (v) that those documents contain the terms and provisions stated and incorporated in them.

**2. Denials**

Landreth Timber II denies each and every averment contained in the counterclaims and each and every con-

clusion or inference which may be drawn therefrom which is not expressly admitted elsewhere in this answer, including, without limitation, each and every averment, conclusion or inference contained in paragraphs 80, 82 and 83; in paragraph 69 to the extent not hereinabove specifically admitted; in paragraphs 70, 71, 72, 73, 74, 75, 76, 78 and 79 to the extent not hereinabove specifically admitted.

### 3. *Restatement of Responses*

Landreth Timber II responds to paragraphs 77 and 81 of the counterclaims as it responded to those other paragraphs of the counterclaims incorporated by reference into paragraphs 77 and 81.

### 4. *Denial of Inferences*

While portions of the counterclaims, such as the last sentence of paragraph 80 do not, by their terms, require any response by Landreth Timber II, Landreth Timber II expressly denies any conclusions or inferences which might be drawn from any statement in the counterclaims not hereinabove specifically admitted, including, without limitation, any conclusion or inference to the effect that defendants or any of them are entitled to any relief whatsoever under the laws or principles to which reference directly or indirectly has been made. Landreth Timber II further denies any conclusions or inferences which might be drawn from the selective interpretations placed upon documents referred to in the counterclaims by defendants.

### 5. *No Basis For Relief*

Landreth Timber II denies that defendants or any of them are entitled to any relief from Landreth Timber II as sought by the counterclaims on their "Prayer For Relief".

For further answer and defense to defendants' counterclaims, Landreth Timber II states:

6. Defendants have failed to state any claim upon which relief may be granted.

7. Landreth Timber II incorporates herein, as though fully set forth, the allegations contained in paragraphs 1 through 34 of its First Amended Complaint, as defenses to the counterclaims of defendants.

8. Defendants are estopped by their conduct from asserting or recovering upon the counterclaims they have asserted.

WHEREFORE, Landreth Timber II prays for judgment, in addition to the prayer for judgment contained in its First Amended Complaint, as follows:

1. That defendants' counterclaims be dismissed with prejudice and without costs to defendants;

2. That this court declare that the entire escrow fund in the possession of Seattle-First National Bank be declared to be the sole property of Landreth Timber II;

3. That Landreth Timber II be awarded its expenses, costs and reasonable attorneys' fees incurred in connection with defense against defendants' counterclaims; and

4. That Landreth Timber II be awarded such other and further relief as to the court is just.

DATED this 15th day of January, 1979.

GRAHAM & DUNN

By /s/ GERALD T. PARKS, JR.

By /s/ R. BRUCE JOHNSTON

Attorneys for Plaintiff

Landreth Timber Company, Inc.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Civil Action No. C78-663R

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

v.

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and  
wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR.  
and KATHLEEN LANDRETH, husband and wife,  
*Defendants.*

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and  
wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR.  
and KATHLEEN LANDRETH, husband and wife,  
*Counterclaim  
Plaintiffs,*

v.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim  
Defendant.*

[Filed Aug. 7, 1980]

**PLAINTIFF'S MOTION FOR LEAVE  
TO AMEND COMPLAINT**

Pursuant to Federal Rules of Civil Procedure, Rules 15(a) and (c), the plaintiff moves to amend its Complaint as follows:

1. *The Parties.* The plaintiff moves to alter paragraphs 3, 4, and 5 to reflect that Ivan K. Landreth resides in

Redmond, Washington, and at all relevant times was married to Lucille Landreth, that Thomas E. Landreth resides in Hermosa Beach, California, and that Ivan K. Landreth, Jr., resides in Kirkland, Washington, and at all relevant times was married to Kathleen Landreth.

2. *Additional Claims.* The plaintiff moves to amend the Complaint to add the claim, at paragraphs 21 and 31, that the offer and sale of all the outstanding shares of Landreth Timber I by the defendants to the B & D Company constituted the offer and sale of unregistered securities in violation of Sections 5 and 12(1) of the Securities Act of 1933, 15 U.S.C. § 77e and 15 U.S.C. § 771(1), and in violation of Sections 21.20.140 and 21.20.430 of the Securities Act of Washington, RCW 21.20.140, .430.

3. *Grounds.* The defendants' correct current addresses and names were discovered by means of pretrial interrogatories in the above-entitled action. The additional claim arose out of the same conduct, transaction, or occurrence set forth in the original Complaint, and justice requires that all claims be adjudicated together.

DATED this 7th day of August, 1980.

EDWARDS AND BARBIERI

By /s/ John W. Hathaway  
JOHN W. HATHAWAY  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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No. C78-663-R

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

vs.

IVAN K. LANDRETH and LUCILLE LANDRETH, *et al.*,  
*Defendants.*

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**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT ON SECURITIES CLAIMS**

Defendants move for summary judgment as follows:

1. Plaintiff's federal securities claims should be dismissed because the transaction at issue in this lawsuit does not involve a security. The remainder of plaintiff's claims also should be dismissed as there is no federal jurisdiction in the absence of plaintiff's federal securities claims.

2. Even if this Court does not dismiss plaintiff's federal securities claims on the grounds requested above, it should dismiss plaintiff's federal and state claims under Sections 5 and 12(1) of the Securities Act of 1933, 15 USC § 17(e) and 77(1), and the Securities Act of Washington, RCW §§ 21.20.010 and 21.20.430, because the sale of stock at issue in this lawsuit was not a public offering and plaintiff is prevented on equitable grounds from belatedly asserting registration claims.

3. This motion is supported by defendants' Memorandum in Support of Defendants' Motion for Summary Judgment on Securities Claims and the accompanying affidavits.

DATED this ..... day of ....., 1980.

BOGLE & GATES

JAMES A. SMITH, JR.  
GUY P. MICHELSON  
PATRICIA H. CHAR  
RICHARD D. VOGT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Civil Action No. C78-663R

LANDRETH TIMBER COMPANY, INC.,  
Plaintiff,

v.

IVAN K. LANDRETH and LUCILLE LANDRETH,  
husband and wife, *et al.*,  
Defendants.

[Filed Nov. 10, 1980]

**AFFIDAVIT OF SAMUEL S. DENNIS  
IN OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

STATE OF MASSACHUSETTS     )  
  ) ss.  
COUNTY OF SUFFOLK         )

SAMUEL S. DENNIS 3D, being first duly sworn, on oath deposes and states:

1. I am one of the principal shareholders in the plaintiff Landreth Timber Company, Inc., and I was the principal negotiator on behalf of the purchasing group in the acquisition of all the shares of Landreth Timber Company from defendants. I make this affidavit upon personal knowledge and am competent to testify to the matters stated herein.

2. I am an attorney in the law firm of Hale and Dorr, and I reside in Newton, Massachusetts. My professional

background is primarily in the area of federal income and estate taxation. As part of my practice, I have participated in several corporate acquisitions for clients, with my primary responsibility being in the area of federal taxation. The principal investors in Landreth Timber Company shares were John Bolten and me. Prior to the acquisition of Landreth Timber Company in November, 1977, neither John Bolten nor I had any knowledge whatsoever of the forest products industry. Prior to acquisition of stock in the Landreth Timber Company, neither John Bolten nor I had ever met the defendants, Eugene Graf, their broker, Jack Branch, who worked with Mr. Graf on the transaction and later became one of the purchasers, or any of defendants' representatives.

3. I conducted all negotiations with Mr. Landreth or his representatives. Mr. Bolten was not involved in the negotiations in any way. Throughout the negotiations with Mr. Landreth, I clearly stated that the primary inducement for purchasing the shares in Landreth Timber Company was the prospect of profits to be derived from operation of the sawmill facility being designed and constructed by Mr. Landreth. No member of the purchasing group had any intention of participating in the actual operation of the sawmill facility being designed by Mr. Landreth. In completing the stock purchase, I relied solely upon the expertise of Ivan Landreth to design and construct a sawmill facility capable of generating the profits that he represented to me and to select the management personnel to operate the facility in a profitable manner.

4. I first learned of the Landreth Timber Company in late July, 1977, through a letter from Jack Branch forwarded to me by Al Willard, a local business broker. Mr. Branch's letter stated that a sawmill in Washington State was available for purchase and described the facility in detail. The letter stated that the mill specialized in lamstock, a highly profitable product; that as a small



business the mill could always obtain timber from the government; that the mill was self-sustaining, with its own logging and road-building equipment; that the owner had agreed to sell the mill four months earlier, but it had been destroyed by fire before the deal could be consummated. It further stated that the owner was using approximately \$900,000 in insurance proceeds to install a computerized facility, called a Maxi-Mill, which, with a second mill, called a Helle Mill, would radically increase the mill's productivity; that the old mill had been very profitable in the past two years, even though it had operated only a few months each year; that the new facility would produce 200,000 board feet per day and generate nearly \$7 million in annual profit. The price for the facility was \$3,300,000 plus assumption of \$250,000 in debt. True and correct copies of the Branch and Willard letters containing the above representations are attached to this affidavit as Exhibits A and B.

5. I contacted Jack Branch to obtain further information concerning the facility. Branch informed me that he was working with Gene Graf, a broker retained by Ivan Landreth, to seek a purchaser for the facility. Branch reiterated that the facility was recently destroyed by fire and that the owner was rebuilding it with new, computerized equipment that would produce much greater profits than had the previous mill. Branch added that, with the new computerized equipment, the new facility, once completed, would easily cut 200,000 board feet per day on two shifts and it would produce 100 percent overrun. Branch stated that overrun represented the amount of lumber that was produced out of a log in addition to the amount the log was scaled to produce. He stated that overrun at noncomputerized mills was around 20 percent.

6. I then contacted John Bolten, an associate and client, and related to him Branch's description of the

investment. Mr. Bolten was interested, and in late July, 1977, I asked Branch for more information.

7. On another occasion, I also spoke by telephone with defendant Ivan Landreth, who was at Branch's office. I told defendant Landreth that we wanted to purchase the operating assets and inventory of the sawmill from Landreth Timber Company. I informed Mr. Landreth that I was reluctant to purchase the corporate shares because such a purchase would render the purchasing group liable for any undisclosed corporate liabilities. Mr. Landreth was unwilling to sell the assets and replied that any sale must be structured as a stock purchase. I assumed that Mr. Landreth wanted to sell stock rather than assets in order to reduce his federal taxes on the transaction by maximizing his capital gains and avoiding depreciation recapture and receipt of ordinary income on such things as inventory. I reluctantly agreed to purchase shares if the transaction came to fruition.

8. The purchase of shares rather than assets was much more costly to the purchasing group because we were required to form a separate corporation and liquidate the corporation into the Landreth Timber Company in order to establish the proper basis for depreciation in the Landreth Timber Company assets. We incurred additional costs for the accounting work necessary to allocate the purchase price to the various assets held by the Landreth Timber Company. The bulk of these costs would not have been incurred if we could have purchased the assets directly.

9. Branch and defendant Landreth both informed me that the sawmill facility had been appraised at \$5 million to \$6 million, and that Mr. Landreth was selling the sawmill for health reasons.

10. I told Branch that the purchasing group would incur substantial expenses prior to closing the stock sale. I insisted upon an exclusive option to purchase the saw-

mill facility to protect the purchasing group in the interim. I also told Branch that we would agree to the stock purchase transaction only after we were satisfied that the new facility being designed and constructed by Mr. Landreth would be as profitable as Mr. Landreth represented.

11. Mr. Branch informed me that he believed this would be a very profitable investment and that he and a group of his associates would like to be part of the purchasing group. I agreed by letter of July 29, 1977, that Mr. Branch's group could purchase 25 percent of the stock in Landreth Timber Company and repeated that he should seek an exclusive option. Branch later informed me that defendant Landreth would not agree to an exclusive option because he was pursuing other offers. A true and correct copy of that letter is attached to this affidavit as Exhibit C.

12. We retained Peter Townsend, an accountant, to visit the construction site and review the corporation's books and records in order to verify defendant Landreth's representations. The primary reason for this review was to search for undisclosed liabilities of the corporation and to examine the strengths of internal management control. Mr. Townsend was also asked to develop cash-flow projections for the new facility. The new facility was to be radically different from the old saw-mill, and Mr. Townsend could not base his projections on past mill performance. Rather, Mr. Townsend was to rely on defendant Landreth's representations concerning productivity of the new facility.

13. Mr. Townsend sent me five reports concerning the productivity of the new facility and two reports on tax and record-keeping matters. True and correct copies of the five reports are attached to this affidavit as Exhibits D through H. I understood from the reports that defendant Landreth was the source of all information con-

cerning the profitability of the new facility under construction. The cash-flow projections based upon Mr. Landreth's representations suggested that the new facility under construction would be very profitable.

14. The August 9 report stated that Mr. Landreth projected \$700,000 profit for 1977 if the old mill had not burned down. From discussions with Mr. Landreth, Mr. Townsend projected annual profits of at least \$1,000,000 from the new facility. The September 15 cash-flow projections were prepared after a two-day visit with Mr. Landreth and Pat Peyton, his accountant. The September 15 report projected a net profit of over \$1,000,000 during the first year of operations from a one-shift operation. The report stated that the Maxi-Mill would be operational on November 1, 1977, and fully efficient by January 31, 1978. The Helle Mill was to be operational by October 1, 1977, and fully efficient by October 15. The September 15 report stated that Mr. Landreth's conservative estimate of timber mix for the new facility included 52 percent lamstock production and another 20 percent of highly profitable clears and framing lumber.

15. On September 29 and 30, Mr. Townsend visited the construction site and discussed with Mr. Landreth internal control matters and status of construction. His October 14 report stated that no sales, costs or expense records were available because Mr. Landreth was so close to mill operation that none were prepared. Mr. Townsend, in his November 4 report, stated that, on September 30, Mr. Landreth stated that \$164,000 in capital expenditures remained to be made. The cash-flow projection stated that first-year net profits would exceed \$1,600,000 on a double-shift basis. Mr. Townsend's November 16 report stated that Mr. Landreth had provided a figure of \$136,789 in capital expenditures remaining to complete construction.

16. Mr. Landreth's representations to me directly, and as reported by Townsend concerning the profits of the



new facility and his agreement to remain after closing to help manage the operation constituted the primary inducements for me to enter into this transaction. Mr. Landreth's assurances that the facility was nearly completed induced me to close the transaction on November 17, 1977.

17. Mr. Branch furnished me with a July 29, 1977 report from Lease & Beadling Engineers, Inc., concerning the equipment that would make up the new sawmill facility. The information contained in the report was based on one visit to the mill and some interviews with Mr. Landreth and his equipment suppliers. The report did not attempt to estimate the actual replacement value of the equipment then at the plant, but rather estimated what the capital cost would be to establish a new mill with the equivalent capacity and efficiency represented by Mr. Landreth. The report estimated that it would cost between \$3 million and \$3.5 million to construct a sawmill capable of producing 200,000 board feet per shift on a two-shift basis. I felt that I could put very little weight on the Pease & Beadling preliminary appraisal of the value of the facility because the sawmill was still under construction.

18. I visited the Landreth construction site on September 15, 1977. At that time, construction of the computerized Maxi-Mill had not yet begun. Only a concrete floor was in place where the computerized mill was to be installed. The existing facilities that had survived the fire were intact. The Pease report had criticized some of these facilities, especially the smaller Helle Mill, which was not operating, the debarking facilities, and the dry kiln. Ivan Landreth disagreed with these criticisms and informed me that the Helle Mill was a top-flight piece of equipment suited for the job. He stated that the planer was old, but worked well and it was serviceable, and that the dry kiln was reasonably new and serviceable. I specifically informed Mr. Landreth that, to justify

the investment, the mill would have to be operated on two shifts. Mr. Landreth informed me that the mill could operate on two shifts after the Maxi-Mill had been started, and that it ought to produce 200,000 board feet per day on a two-shift basis. Mr. Landreth stated that the noncomputerized Helle Mill portion could go on a two-shift basis almost immediately, and that the computerized portion could be operated on two shifts after three months start-up. Mr. Landreth had kept his key personnel including his plant manager who had been with him for many years and assured me that they were competent, experienced and could run the new operation on a two-shift basis satisfactorily. He also stated that there was adequate labor supply in the Tonasket area. Mr. Landreth took me on a tour of the construction site and assured me that all the facilities were in good condition and suitable for their purposes. During that meeting, I informed Mr. Landreth that I was relying on him for the facts concerning the quality and capacity of the sawmill components because the facility was only half constructed and was not running. Landreth assured me that the equipment was in good operating condition and would only need routine maintenance, and that the production of 200,000 board feet of lumber per day could be achieved with the equipment then at the plant, once the computerized portion was completed.

19. I asked Mr. Landreth to continue on as general manager of the sawmill facility after the purchase and to be a member of the board of directors of the new corporation. I explained that his knowledge of the design of the facility and of the management structure and market for the products was essential to insure the profitability of the investment, especially since the purchasers had neither the expertise nor the intention to actually operate the mill. Mr. Landreth informed me that he would prefer not to be in direct charge of managing the facility or serve on the board of directors. I told Mr. Landreth that we could not complete the transaction unless he was

willing to service full-time in a management capacity for at lease (sic) the first six months and then stay on as a consultant. I also asked him to work with Branch to find a suitable manager. Mr. Landreth and the purchasing group eventually entered into a consulting agreement under which Landreth agreed to stay on full-time for the first year. A true and correct copy of the consulting agreement is attached to this affidavit as Exhibit I.

20. Defendant Landreth and I agreed on a purchase price of \$3 million, plus assumption of the bank debt, which now totaled \$400,000, all cash at closing. The transaction was jointly financed by Rainier National Bank and The First National Bank of Boston, which agreed to loan the purchasing group \$1.9 million, secured by a first mortgage on the plant and equipment, plus \$1.5 million in loans guaranteed by Mr. Bolten and me and secured by \$530,000 cash on deposit and marketable securities owned by Mr. Bolten and me in Standex International Corporation. By the terms of the Amended Stock Purchase Agreement, the defendants were paid \$750,000 at closing, with the balance of \$2,250,000 to be paid by the bank on January 10, 1978. An escrow account of \$150,000 was first set aside and later increased to \$300,000.

21. The closing documents include a Stock Purchase Agreement, executed on October 6, 1977, an Assignment of, and Amendment to, the Stock Purchase Agreement, executed November 16, 1977, a Certificate executed on November 17, 1977, stating that defendants' warranties and representations in the October 6, Stock Purchase Agreement were true and correct as of November 17, 1977, and an opinion by Mr. Landreth's attorney, Edward Engst, that the corporation was duly incorporated, that all shares were duly and validly issued, and that there were no restrictions on transfer imposed by the articles of incorporation or bylaws, and that the transfer of all the issued and outstanding shares would not con-

stitute a violation of any statute or regulation. True and correct copies of these documents are attached to this affidavit as Exhibits J through M. The Stock Purchase Agreement and other closing documents underwent several changes during the negotiations. Drafts of all these documents were forwarded to Edward Engst, defendant Landreth's attorney, throughout these negotiations.

22. Mr. Landreth was present at closing with his attorney, Edward Engst. The closing documents contained warranties concerning the quality of mill equipment and the production capacity of the facility. Mr. Landreth also warranted that the physical assets of the company consisted of an integrated lumber manufacturing facility in Tonasket, Washington, constructed with first-quality and suitable equipment in a workmanlike manner. The closing documents warranted that the cost to complete the construction would be approximately \$136,000, and that the construction would be completed by the end of November, 1977.

23. At the closing, I again told Mr. Landreth that I was relying upon him for the construction figures and the production capacity of the mill. I told him that I would not rely upon appraisers or accountants because I was purchasing Landreth Timber Company from Ivan Landreth, and not from the appraisers and accountants. Mr. Landreth reiterated his statement that the mill would produce 100,000 board feet per shift and that the \$136,000 figure to complete construction was correct. I executed the closing documents on behalf of the purchasing group in reliance upon Landreth's representations and warranties. After closing, the shareholders in the Landreth Timber Company included John Bolten and myself as owners of all Class A shares. The Class B shares, representing 15 percent of the equity of the corporation, were held by Jack Branch, Al and Isabel Willard, Troy N. Beaver, Jr., and Robert E. Branch.



24. Shortly after closing, Philip Cook, the new general manager, informed me that construction was far behind schedule. I directed Mr. Cook to segregate expenditures relating to mill construction and to keep a running account of construction costs. We hired Al McKimmey, an experienced sawmill accountant, to review the cost overrun and to organize the figures in the event that they would need to be asserted as a claim against the escrow.

25. The major problem to complete the mill was construction of the computerized Maxi-Mill. Actual construction of this had not yet begun. Only the concrete substructure was in place. The manufacturer, Warren & Brewster, informed us that Mr. Landreth had refused a proposal by which Warren & Brewster would perform all the engineering, fabrication, and construction work on this facility. Mr. Landreth had purchased only the Maxi-Mill itself. No engineering had been performed for the conveyors and other equipment that would integrate the Maxi-Mill into the rest of the facility. No provision had been made for fabrication of this equipment. On November 19, 1977, Lyle Warren, the president of Warren & Brewster, flew to the construction site with Warren & Brewster personnel to inspect the problems. They concurred that it would take months to finish construction and recommended that Almax, a subsidiary of Warren & Brewster, be hired to finish construction. Almax began work on November 20, and, using mill personnel as well, worked for a period of eight weeks, including substantial overtime, to complete the Maxi-Mill construction.

26. Mr. Landreth was either absent or unhelpful in aiding us in seeking solutions to the construction problems. When it became apparent that Mr. Landreth was not cooperating in solving these problems and that we would need to assert a claim against the sellers for these

cost overruns, we terminated Mr. Landreth's consulting contract. On January 4, 1978, a claim for overruns to that date were served on Edward Engst, Mr. Landreth's attorney. On January 10, 1978, the escrow amount was raised to \$300,000 to cover the claim for additional Maxi-Mill construction costs. The remainder of the purchase price, \$2,100,000, was disbursed by the bank to sellers.

27. Exhibit H to the Amended Stock Purchase Agreement stated that the sawmill construction could be completed for \$5,000 during a two-week period through November 30, 1977. The actual labor required to complete just the computerized portion of the sawmill totaled \$89,740 and took over eight weeks, even though the construction was being handled by personnel who were skilled in the installation of this particular machinery. Mr. Landreth warranted in the closing documents that payments to the manufacturer of the Maxi-Mill (the computerized portion of the facility) to complete construction would total \$72,000. The actual total paid to this company to complete the Maxi-Mill installation was over \$150,000. These payments were for parts to the Maxi-Mill system that were necessary for the operation of the sawmill. In addition to the sawmill construction costs incurred after November 17, 1977, there were nearly \$30,000 in invoices relating to equipment that had been purchased, but not paid for, prior to closing. The portion of these items incurred before January 4, 1978, formed the basis of the claim then asserted against sellers.

28. Throughout December and January, the efforts of sawmill personnel were directed toward completion of the Maxi-Mill. This facility was completed in early February, 1978. During the initial testing of the Maxi-Mill in February, we realized that other major pieces of the mill were defective and totally inadequate. The edger installed by Mr. Landreth was incapable of functioning

because no set works could be designed to operate it, and it had to be replaced at a cost of over \$50,000. The debarking facility was completely worn out and totally inadequate to supply logs to the mill. It repeatedly failed to debark logs, causing the computerized Maxi-Mill to malfunction. Mill personnel informed us that Mr. Landreth had to run the debarker on double shifts to keep up with the capacity of the old mill. Consequently, it was clear that a new debarker would be necessary. Because total expenditures on mill construction had by then reached over \$250,000, the purchasing group did not have sufficient funds available to buy a new, fully adequate debarker. A used debarker was purchased and installed for \$27,000.

29. The largest amount expended in completing the sawmill facility was for a substantial number of items necessary to complete noncomputerized portions of the facility. Nearly \$235,000 was paid for such items as electrical equipment, transportation of materials, computer programming, labor, welding equipment, and machine work.

30. In total, the actual cash outlays expended on mill construction and equipment exceeded the amount warranted by Mr. Landreth in the Amended Stock Purchase Agreement by over \$500,000.

31. The above expenses for mill construction were paid by the corporation. From closing on November 17, 1977, until the transfer of the assets to the Tonasket Timber Company on October 5, 1978, the sawmill facility was never fully operational. Only insignificant production was generated. The mill never produced even a fraction of the warranted production of 100,000 board feet per shift for more than a few hours at a time. We achieved insignificant overrun. The bulk of labor costs continued to be on construction items. In addition, the equipment in the Landreth mill proved in-

compatible with the production of lamstock, which must be produced under precise conditions. The old fire-fed dry kiln was incapable of moisture controls sufficient to dry the lamstock to the required moisture content, and the manufacturing equipment lacked the precision to produce even a small quantity of acceptable lamstock. The production that was achieved was of only low-grade lumber.

32. Further problems were caused by Mr. Landreth's serious design errors in constructing the facility. The building housing the facility was so small that all major pieces of equipment were crowded for space. Consequently, any minor malfunction caused the entire facility to shut down. In July, 1978, my attorneys sought advice from Harry Kennison, a sawmill engineer, in connection with these claims. Mr. Kennison concluded that we would have to completely redesign the layout of the mill to improve production.

33. During this period, the Rainier National Bank advanced an additional \$800,000 to the corporation to finance the cash-flow deficit. This raised the amount subject to Mr. Bolten's and my personal guarantee to \$1.9 million in addition to the \$530,000 cash on deposit which had been consumed. In addition, Mr. Bolten and I personally advanced over \$635,000 to the corporation to help finance the cash-flow deficit. By July, 1978, the corporation's financial statement showed a loss of over \$1.7 million. These losses, plus the capitalized portion of the cost of completion, total over \$2 million. These losses continued until the assets were transferred to the Tonasket Timber Company.

34. In July, 1978, it was apparent that Mr. Bolten and I could no longer continue to pay for the losses and cash-flow deficits of the corporation. The corporation was faced with either bankruptcy and liquidation or seeking a purchaser for the sawmill. As Mr. Bolten and



I would continue to be liable on our guarantees to Rainier National Bank, we sought a purchaser for the assets rather than liquidation. After considerable search, only Tonasket Timber Company was willing to take over the facility. Tonasket Timber Company agreed to expend an additional \$500,000 on capital improvements. The banks permitted the transfer only on the condition that the corporation remain liable on the bank loans and that Mr. Bolten and I remain liable on our guarantees. In addition, Mr. Bolten and I were required to pay down the bank debt and to pay certain corporate creditors. Our cash outlays to effect the transfer totaled \$1,035,000. Neither Mr. Bolten, the corporation nor I received any payment whatsoever from Tonasket Timber Company. As Mr. Bolten and I could no longer sustain the corporation losses, we were compelled to accept the offer. On October 5, 1978, the facility was transferred to Tonasket Timber Company. On November 1, 1978, this lawsuit was filed. In November, 1979, I was notified by Rainier National Bank that the bank was foreclosing on our guarantee and on the Tonasket Timber Company because the Tonasket Timber Company had defaulted on our loan payments. In January, 1980, at a sheriff's sale, the sawmill facility was sold by the Rainier National Bank for approximately \$600,000.

35. Mr. Bolten's and my actual cash losses as a result of the sellers' misrepresentations as to the capacity and quality of the facility and sellers' failure to disclose the true state of construction and defects in equipment total over \$3,400,000. The losses consist of the following amounts:

Rainier Bank loan guarantee	\$1,725,000
Stock purchase	170,000
Operating loan	530,000
Advances for operating losses	635,000
Payments to corporate creditors	220,500
Commission on sale to Tonasket Timber	95,000
Payroll taxes	50,000

I was required to sell a major portion of the property I own to cover these losses. In June, 1980, Mr. Bolten and I paid Rainier National Bank \$1,025,000, the remaining balance on our guarantee.

Aside from purely financial losses, as devastating to Mr. Bolten and me as they have been, one cannot over-emphasize the injury to Mr. Bolten's health that has been caused by this transaction. In February, 1978, I and Mr. Bolten, who is an elderly person, visited the construction site to confer with management concerning the state of construction. Mr. Bolten was visibly shaken by the deep problems we encountered, and, shortly thereafter, he suffered a massive heart attack, from which he has never adequately recovered.

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3d

SUBSCRIBED AND SWORN to before me this 6th day of November, 1980.

/s/ Ruth A. Weymouth  
Notary Public in and for the  
State of Massachusetts, re-  
siding at Framingham, MA  
01701

My comm. expires Dec. 21,  
1980.

D/2361B

## EXHIBIT A

AL WILLARD  
3 Windy Hill Road  
Cohasset, Mass. 02029  
617-303-0197

July 21, 1977

Mr. Samuel Dennis, 3d  
Hale & Dorr  
28 State Street  
Boston, Mass. 02108

Dear Sam:

The enclosed "Landreth Lumber Mill" is a financial situation that deserves your attention. Jack Branch and I would like to take control of the situation, and would be guided by your expert advise. The money situation (\$3,300,000) could be a tremendous obstacle, and I would appreciate your comment.

Sincerely,

/s/ Al  
AL WILLARD

AW/pc

PS: I am purposely not bothering you regarding the Astrodome. Needless to say I do expect to fulfill my role in naming the Chairman of the Board, and if I do, Sam Dennis and Al Willard will receive stock in the corporation, and, Hale and Dorr (with their consent) will still be the legal consultants.

## EXHIBIT B

TIMBER WEST, INC.

July 19, 1977

Mr. Al Willard  
3 Windy Hill Road  
Cohasset, Mass. 02025

Re: Landreth Lumber Mill, Tonasket, Washington

Dear Al:

Attached are the preliminary work sheets on the mill I mentioned to you in Washington State. This is in the Okanogan National Forest area of north central Washington in an area that cuts approximately 250 million bd. ft. of timber per year (150 mile radius). This particular area is especially noted for a product known as lamstock; more especially, this timber is slow growth, fine grain and is used and in demand in making laminated beams and other laminated wood products. This is quite slow growth douglas fir (80%) and ponderosa pine (20%).

The mill has purchased 30 million bd. ft. of timber from SBA Forest Sales (SBA Forest Sales are sold only to small mills). Twenty-five percent of sales of the Okanogan National Forest are set aside for SBA Sales and 45% of the sales from Colville National Forest are set aside for SBA sales.

The average stumpage from these sales runs between \$60 and \$100 per 1,000 according to a government timber index code. Presently, the stumpage is approximately \$80 and appears to be steady. One recent sale this year was 6 million bd. ft. at \$81 and another 11 million bd. ft. at \$86 per 1,000.

The mill was destroyed by fire approximately 2 months ago and a new maxi-mill, all computerized with new



graphite band saws, is being built and will be completed by the end of September at the latest. This new maxi-mill cuts an over-run of 100% of the standard Scribner scale of measuring logs (logs are scaled from the smallest end and a certain inch log has a pre-determined scale of board feet according to a scale book set forth about 50 years ago).

Most of the old time mills cut 20% to 25% over-runs. Example: if on the log scale, the log had 1,000 ft. in it, it would cut from 1200 to 1250 ft. when run through the saw mill. With this new computerized maxi-mill, the log would yield approximately 1,000 ft. where you were only scaled at 1,000 ft. We pay stumpage and logging on scale only. The over-run of 1,000 bd. ft. has only the mill cost of \$30.00 per 1,000 bd. ft. to be taken from the sale. The balance is net profit.

The logs enter the mill on a conveyor and go through a debarker which literally skins them like a telephone pole. It then goes to the chipper which routs (chips) out the outside part to make the log square. In other words, the new mill does not cut off slabs; it turns all of what used to be slabs from the side of the log into pulverized chips that are sent to a paper mill for paper products. In this particular case, the mill has a contract with Weyerhaeuser in Longview, Washington and ships all of the chips produced at approximately \$30 per cunit profit. A cunit is a unit of measurement in timber (approximately 600 bd. ft.) measured by volume weight.

The mill has a kiln dryer with a dutch oven (waste burner to burn the sawdust). The kiln drying system has the capacity for 100,000 bd. ft. per day. This timber takes two days in the dryer so we will have to increase the kiln drying capacity to 400,000 bd. ft. per day to cover two shifts of production. This cost is estimated to be \$200,000.00. There is adequate space for this expansion.

This mill is unique in that it does not buy from any outside loggers and the operation has all the logging and road building equipment to be self-sustaining.

The owner of the mill is very eccentric and since he is his own supplier, merely runs the mill when he wishes to. The books show for nine months of operation in 1974 the profit before taxes was in excess of 1.1 million dollars of which \$450,000 was paid in taxes. In 1975, profit was \$400,000 from only 4 months of operation and in 1976, \$300,000 from 3 months of operation. The man's wife was ill and was frequently in California for X-ray treatments and he simply closed the mill down.

The man agreed to sell the mill approximately four months ago and before anything concrete was put together, the mill burned down and insurance is paying for the complete new maxi-mill (approximately \$900,000 worth of installation). Some of the old equipment was salvaged, but not much.

There is 1.5 million bd. ft. of logs in the yard at present, paid for at an estimated cost of \$80.00 stumpage and \$50.000 logging (\$195,000). There is 1.5 million bd. ft. of logs decked in the woods (logging cost of \$50.00 is paid for—\$75,000 value). Stumpage is paid for after the logs are delivered to the yard and they are scaled by the Forest Service.

There is 1 to 1½ million bd. ft. of cut kiln dried lumber in inventory in the storage sheds and in the yard. This is stock to ship from and it takes approximately this much inventory to maintain shipments. The wholesale value of this lumber would be \$160 per 1,000 or between \$160,000 and \$240,00. The new maxi-mill would easily cut 200,000 bd. ft. per day (two shifts) at a profit of \$145 per 1,000 including the 100% over-run (set work sheet attached).

At 200,000 bd. ft. per day and \$145 per 1,000 profit, this equals \$29,000 per day, \$580,000 per month, \$6,900,000 per year profit.

This mill is listed at \$3.3 million with an assumption of a \$250,000 note plus an anticipated \$200,000 addition to the kiln dryer and an \$250,000 operational reserve for a total of \$4 million. The terms are cash and it will take a \$200,000 deposit to inspect the books and arrange closing in approximately 30 days. This mill is a very good buy and should fit the tax situation we discussed. We have a place to handle the financing, but I would like your comments and appraisal of this situation if you are interested. Let's pursue this further by phone after you have reviewed these materials.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack P. Branch  
JACK P. BRANCH  
President

JPB:jmk  
Enc.

## ASSETS—LANDRETH MILL

LAND VALUE (70 acres at \$3,000 per acre)	210,000
Replacement Cost (mill & planer incl. bldgs.)	1,200,000
Kiln Dryer (including dutch oven)	500,000
Rolling stock (yard, logging & road bldg. equip.)	350,000
* 30 million bd. ft. of timber (on contract from U.S. Forest Service bought but not paid for)	
Logs down in woods (1.5 million at \$50.00 per 1,000 bd. ft. logging pd.)	75,000
Log inventory 1.5 mil in yard (at \$80.00 per 1,000 + \$50 logging cost)	195,000
Deposits & Credits	50,000
Lumber inventory & accounts receivable (approximately \$100,000)	250,000
Cash in Bank (approximately)	150,000
	<u>\$2,980,000</u>

NOTE PAYABLE: \$250,000 SBA Loan

TOTAL PRICE: 3.3 million dollars CASH plus payment or assumption of SBA loan.

\* A bond is placed with the Forest Service to guarantee payment, thus cutting down the cash needs of timber purchase.



LANDRETH MILL  
Tonasket, Washington

Average Sales Price		\$240.00 per 1,000 bd.
Stumpage	\$80.00	
Logging	50.00	
Milling	30.00	160.000
		<hr/>
		\$ 80.00 Profit

At 20% over-run the mill would have cut 1200 bd. ft. from this 1,000 bd. ft. from scale. This would give us 200 bd. ft. extra and on a pro-rata basis would raise the \$80.00 profit to \$122.00. (20% of \$240=\$48.00 less 20% of \$30.00 milling fee or \$42.00+\$80.00=\$122.00 profit per 1,000 bd. ft.—old mill production).

With the new maxi-mill, the over-run would be 1,000 bd. ft. extra and the only cost against that would be the \$30.00 mill cost.  $\$80.00 + \$210.00 = \$290.00$  on 2,000 bd. ft. or \$145.00 per 1,000 bd. ft. net profit (before tax).

With the availability of government SBA Sales, we will have no problem keeping this mill in timber forever. We would be able to repay the investment within 15 months from funding or work out any royalty situation favorable to taxes.

## EXHIBIT C

HALE AND DORR  
ORIGINAL FILE COPY  
Not to Leave the Office

July 29, 1977

Jack P. Branch, Esq.  
Timber West, Inc.  
300—220th St. N.E.  
Building 3, Suite 200  
Bellevue, Washington 98005

Dear Jack:

This will confirm our conversations today relative to the exclusive option which you are endeavoring to obtain from Mr. Ivan Landreth for the acquisition of Landreth Timber Company, Tonasket, Washington.

As we have discussed, I have arranged for Mr. Landreth or his representative to call Mr. Peter Read, Senior Vice President for the First National Bank of Boston, who will assure him as to my financial capability in connection with the financing of the acquisition of this timber company. It is agreed that you may have the option run to Timber West, Inc., your company, subject to a provision in the option agreement that all rights and obligations under the option may be assigned and transferred to a new corporation to be formed to acquire the timber company. In the event that such acquisition occurs, the capitalization of which will be structured so that my investing group will have their equity investment paid out first with the balance of the corporation equity owned 75% by this group and 25% by you and your group. Pending formation of this corporation the beneficial owners of the option shall be 75% myself and my nominees and 25% Timber West, Inc. and its nominees.

When an irrevocable option has been obtained in form satisfactory to me, I understand that you will immediately undertake to have all aspects of this business evaluated by objective experts (including financial, operating, availability of timber, and marketing considerations) and furnish such information to me. If satisfied that we should go ahead, I will then devote my best efforts to obtaining the necessary financing.

I am enclosing a copy of this letter for your approval and return if the above is satisfactory and in accordance with your understanding.

I am looking forward to working with you.

Sincerely,

S. S. DENNIS, 3d  
7/29/77

Enclosure

The above arrangements are hereby approved.

JACK P. BRANCH  
TIMBER WEST, INC.

By: \_\_\_\_\_

CC: Mr. Willard

EXHIBIT D

PETER H. TOWNSEND

[Address Omitted]

August 9, 1977

Mr. Jack Branch, President  
Marting Logging, Inc.  
Building 3  
Benaroya Business Park  
Bellevue, WA

Re: Landreth Timber Co., Inc. (the corporation)

Dear Mr. Branch,

After a meeting with you and Mr. Ivan Landreth (president of the corporation) in your office on Wednesday, August 3 it was decided that I would visit Mr. Pat Peyton, CPA (of the corporation's CPA firm in Wenatchee, WA), and then visit with Mr. Landreth at the corporation's mill in Tonasket, WA. It was agreed that the purpose of the visit would be to get as much additional information as possible on the corporation within the confines of a one day visit.

This report in no way constitutes an audit report, as no auditing was conducted nor may it be used in any offering where state or federal securities registration is required. It is suggested that if an offer is made to purchase the stock or assets of the operation, then a pre-acquisition audit should be made to ensure that the corporation does in fact own the stated assets and that there are no additional liabilities. Also, it is recommended that detailed pre-acquisition profit plans and cash flow projections be drawn up for a 5 year period.



## A. VISIT TO CPA

I visited Mr. Peyton in Wenatchee on Friday, August 5.

### A-1. INCOME TAX

I reviewed the corporation's income tax returns for 1973-1976. Each year is a voluminous package and contains a report from a Seattle consulting forester to substantiate fair market value of timber in the contracts with the U.S. Forest service. Mr. Peyton said that he had some 6 years experience in Touche Ross and Co.'s (one of the Big 8 accounting firms) Seattle office in the tax department and he seemed knowledgeable on the corporation's tax and business affairs. He showed me the 1973, 1974, and 1975 IRS audit adjustments of some \$25,500. This was a minimal adjustment (mainly for disallowance of investment credit, capital gain and inventory matters) when related to the \$419,000 income taxes provided for in the financial statements for these years. The income tax returns were reconciled to the unaudited financial statements.

### A-2. MINUTE BOOK

I reviewed the corporate minute book which contained no items for 1975, 1976 and 1977. These confirmed Mr. Landreth's salary of \$60,000 per year plus 10% of the corporate profit before income tax; Mrs. Landreth receives \$5,000 annual salary. Also mentioned were the 1974 nationwide business recession and material reduction in housing starts and the effect on lumber sales, volume and price. As of January 6, 1977, Mr. Landreth owns 380 shares and his two sons each own 120 shares, making 500 shares total.

### A-3. 1977 FINANCIAL STATEMENTS

Unaudited financial statements for the 6 months ended June 30, 1977 should be available by August 19, 1977—

initial results produced by the corporation's bookkeeper show an approximate break-even for the 1st quarter of 1977 and a \$76,000 loss for the 2nd quarter 1977. This has been financed by a 1976 tax refund of \$149,726 (higher than estimated at 12/31/76.)

### A-4. INCOME TAX HANDLING OF ACQUISITION

It is highly likely that Mr. Landreth and his sons will only sell the stock in the corporation in order for them to gain maximum capital gain treatment. In order for the purchaser to gain maximum value for the corporate depreciable assets (equipment, vehicles and buildings) it would probably be necessary for a corporation to acquire the stock of Landreth Timber Co. and then to simultaneously liquidate this stock under Section 334(b) of the Internal Revenue Code. Under this method the purchase price could be allocated to the equipment, vehicles and buildings at close to appraised or fair market values, and thus increasing the annual depreciation charge against the profits.

### A-5. FINANCIAL RESULTS 1973-1976—SEE ATTACHMENT I

## B. VISIT TO MR. LANDRETH

### B-1. GENERAL OPERATIONS

Mr. Landreth gave the following information to me on Saturday, August 6 which I did not verify:

The corporation is engaged in logging, processing and selling fir and larch framing lumber and lamstock (for laminations). Mr. Landreth did not have any analysis of the largest customers by volume for any given year—however, this information could be obtained. There is a good sales analysis by type of product sold for each year. The timber is all situated within 16-40 miles of the mill at Tonasket, WA. There are presently five supply con-

tracts with the U.S. Forest Service—2 contracts with some 6 million remaining board feet expire in 1978 and 4 contracts with some 25 million remaining board feet expire in 1980. Mr. Landreth has in the past always cut his contract amount—if he could not process it, the logs could be sold to other mills. Mr. Landreth had at December 31, 1976 deposits of some \$24,000 with the U.S. Forest Service against his performance on the contracts. In addition, he said that there is \$50,000-\$100,000 in road credits due the corporation for reimbursable road costs which he has incurred on U.S. Forest Service land—these are not shown on the books at present. Mr. Landreth indicated that with the small business set aside by the U.S. Forest Service and as there were usually only 2 or 3 bidders including himself for the small business portion, he had not had difficulty in maintaining a reliable source of supply. There is one other S.B.A. mill and competitor in Oroville, 20 miles to the north. The price paid for logs is based on the increase or decrease of the Western Wood Products Association index against the index on the contract signature date. If the index goes up, the purchase price increases by half the amount of the increase. If the index decreases, then the purchase price decreases by the full amount of the decrease. Mr. Landreth said that he has guaranteed performance of the contracts personally, so that the corporation has avoided paying large advance stumpage costs. You would have to ascertain whether this arrangement could be continued or what the advance stumpage costs would be in relation to the cutting volume which you are considering.

On the selling side, Mr. Landreth said that his product is a commodity subject to supply and demand; this applies to the framing lumber and to a lesser extent on lamstock. Freight out is paid for by customers. More lumber is going by truck now, although a fair amount leaves by the Burlington Northern railroad which is approximately 1/2 mile away.

The 70+ acres of company owned land—part is used partly for the mill, partly for sawdust storage for resale and the greater part is not used. There is 1/2 mile of paved road frontage. Mr. Landreth is uncertain of zoning—however, he assumes that with a grandfather clause, the land would be industrial. Some of the land would be unusable as it is hilly. There is no growing timber on the land.

## *B-2. RECENT HISTORY*

1973 was the best year for operating results with 9-10 months operations possible when profits were good.

1974—in January there was a kiln fire which stopped production for 5-6 months. The previous kiln was replaced by a modern brick and steel structure.

1975—equipment and buildings showed capital expenditures of \$144,000 and Mr. Landreth estimated that there was a similar amount expensed. Operations were closed for 6 months thru June 1975 to install the debarker, surge bin, shaker screen, vibrating conveyor, edging chipper, and 2 head rig chippers.

1976—the mill was closed from April 1976 thru February 1977 due to personal problems regarding Mrs. Landreth's health.

1977—in early May there was a mill fire and production has been curtailed since. The mill is being rebuilt from insurance proceeds of some \$700,000. Mr. Landreth indicates that maybe \$750,000-\$800,000 will be spent on the replacement equipment. Mr. Landreth estimates that the Helle Mill will be operational by mid-September and the Maxi Mill sometime in October.

Mr. Landreth has estimated that if production had not been interrupted in 1974-1977 as indicated, then at least \$700,000 profit before taxes would have been achievable using the 1973 existing equipment.



**B-3. NEW OPERATION**

The slab of the new mill building is poured—a new steel STRAN building has been ordered—70' x 170' with an additional 40' x 40' WING. There will be no posts inside the building in the working area. Mr. Landreth expects the annual insurance charge to drop from about \$65,000 to about \$45,000. The new equipment will produce a far greater over-run and use fewer operators than the burned out mill.

Most of the fuel for the kiln is provided from sawdust. The corporation is selling wood chips for paper manufacture as a by-product.

**B-4. OTHER FINANCIAL INFORMATION**

In 1972-1976 bad debts did not total more than \$25,000. Payment terms to customers are 2% for 10 days EOM. Mr. Landreth estimated that 70% of customers accepted these terms.

Mr. Landreth has mentioned that up to \$500,000 in cash might be needed for working capital. In addition to the SBA loan with Old National Bank of approximately \$250,000 which is now due for renewal, the corporation is presently borrowing approximately \$120,000 from Mid Valley Bank, Omak, on a short-term basis. Under the SBA program, Mr. Landreth mentioned that up to \$550,000 would be available as a ceiling in refinancing the existing loan. At August 7, 1977 there was \$35,070 in the general bank account and \$451,534+ interest in the savings account (insurance proceeds not yet re-invested in new plant and equipment.)

**B-5. PERSONNEL INFORMATION**

There is no union shop. Average wages are \$5.00 to \$8.00 per hour for hourly personnel and there is no paid vacation for them. Foremen and superintendents are

paid from \$1350 to \$1750 per month. A general manager to handle marketing and all other mill responsibilities would cost from \$30,000 to \$40,000 per year. Mr. Landreth mentioned Manhill Personnel in Portland, Oregon as specializing in this field along with other firms. For salaried personnel there is 1 week vacation after 1 year and 2 weeks after 3 years. There is a health insurance plan paid for by the corporation for its employees—dependents are also covered if the employee pays for this cost. There is also a group life insurance plan in effect. Industrial insurance is provided by the corporation through the compulsory Washington State plan. At present, one worker has a claim in process for a crushed thumb.

**B-6. BOOKS OF ACCOUNT**

These are maintained manually in Tonasket and the outside CPAs produce quarterly unaudited financial statements. I did not do any auditing work although the 1977 books which I saw (check register, sales journal, accounts receivable ledger and payroll journal) appeared to be well maintained. With a larger volume of sales and production, some mechanization could be considered —this could also cover inventory control.

**C. CONCLUSION**

You mentioned that your machinery, equipment, and plant and vehicle approval would be at least \$4 million based on a qualified appraiser's report. You mentioned that the asking price is \$3,500,000 less any short or long-term debt. You and Mr. Landreth have indicated that the new mill will be substantially more profitable than the previous one.

Without making or having any detailed projections, and based on conversations with you and Mr. Landreth, it is assumed that after tax profits of at least \$1 mil-

lion annually would be achievable (see attachment II). This should pay off in 4 years the \$3 million plus say \$600,000 of possible needed operating capital. I believe that before finalizing the proposed acquisition you should draw up a 5 year profit and cash flow projection on a low, medium and high basis taking into account the new mode of operation. In addition, I believe that you should get any necessary assurances that the computerized mill will produce the over-run claimed for it—preferably making this a condition of the purchase contract. Also, I believe that there should be verification of the corporation's assets and liabilities as of the date of purchase (or as of June 30, 1977) and that there should be some audit work performed on one of two years' results before finalizing the contract. The purchase agreement should also provide for who should pay for the audit work, and also for an amount to be set aside in escrow in case of subsequent IRS adjustments or other unstated liabilities.

Subject to the foregoing pre-acquisition feasibility work and other items which I have mentioned and subject to the necessary skilled legal assistance in drafting the agreement, the purchase appears to offer a more than reasonable return on the capital invested.

Very truly yours,

/s/ Peter H. Townsend  
PETER H. TOWNSEND

Attachments (2)

Unaudited sales, expenses and profits per the corporation's unaudited financial statements

	1976	1975	1974	1973
NET SALES AND MISC. INCOME	1,016,530	1,324,460	1,489,354	2,578,153
COST OF LUMBER SOLD	1,181,958	1,388,046	1,144,766	1,702,848
GROSS PROFIT (LOSS)	(165,428)	(63,586)	344,588	875,305
ADMIN. AND SHIPPING EXPENSES	113,795	119,701	174,270	134,385
NET PROFIT (LOSS) BEFORE INCOME TAX	(279,223)	(183,287)	170,318	740,920
PROVISION FOR FEDERAL INCOME TAX EXPENSE/ (REFUND)	(134,000)	(99,805)	72,964	346,015
NET PROFIT (LOSS)	(145,223)	(83,482)	97,354	394,905
EARNINGS PER SHARE	(290.45)	(166.96)	194.71	789.81

Includes salary for Mr. and Mrs. Landreth of:

\$ 65,000 \$ 65,000 \$ 102,500 \$ 117,500

1972 showed a net profit before tax of \$378,407 (including 72,769 profit on repayment of notes)

1971 showed a net loss before tax of \$22,047

1970 showed a net loss before tax of \$107,793

1969 showed a net loss before tax of \$52,689

1968 showed a net loss before tax of \$3,608



**TENTATIVE UNAUDITED PROJECTION OF  
INCOME STATEMENTS BASED ON 1973 PROFITS**

Taking 1973, the last full year of production and sales, as a base year when 12 million board feet were sold with a pre-tax profit of \$740,920, the following assumptions would appear to be reasonable. Since 1973 vastly improved plant and equipment has been or will be installed. Diesel fuel has largely been replaced by sawdust to heat the new kiln. A new mill will have been installed by October 1977 using fewer people with faster production and far greater over-run than the 1973 operation. With the sifter the corporation is now selling wood chips for pulp which it was not doing in 1973. All these items indicate a greater percentage profitability than 1973. You have indicated that 100,000 board feet of lumber per day, per day shift, will be achievable which at 20 days per month for say 10 months per year would be 20 million board feet for a full year, ie 2/3 increase over 1973. It is suggested that you thoroughly check this assumption from a production and marketing viewpoint with third parties prior to acquisition. Using 1973 sales dollars and cost of lumber sold as a base, a new year's operations could look as follows:

**BASED ON ONE SHIFT OPERATIONS**

	1973		12 months ended October 31, 1978	
Net Sales	2,578,153	100.0%	4,296,923	100.0% (166.66% of 1973)
Cost of Lumber Sold	1,702,848			
Less: Excess officers salary - bonus	(45,000)			
	<u>1,657,848</u>	64.3%	<u>2,148,462</u>	(say 50% because of above efficiencies)
Gross Profit	<u>920,305</u>	35.7%	<u>2,148,461</u>	50.0%
Less: Admin. and Shipping Exp.	134,385			
Less: Excess officer salary - bonus	(12,500)			
	<u>121,885</u>	4.7%	<u>171,877</u>	4.0% (say 4% for greater efficiency)
Adjusted Net Profit before tax	<u>798,420</u>	30.0%	<u>1,976,584</u>	46.0%
Provision for income tax - approx.	<u>370,000</u>	14.4%	<u>780,634</u>	18.4%
NET INCOME	<u>\$ 428,420</u>	16.6%	<u>\$1,195,960</u>	27.6%

**EXHIBIT E**

PETER H. TOWNSEND

[Address Omitted]

**LANDRETH TIMBER COMPANY, INC.  
CASH FLOW PROJECTION  
FOR THE TWELVE MONTHS ENDED  
AUGUST 31, 1978  
(UNAUDITED)**

Mr. Samuel S. Dennis III  
Hale and Dorr  
28 State Street  
Boston, Mass. 02109

I have prepared the attached unaudited Cash Flow Projection for the above period based on information given to me by Mr. Ivan Landreth, President of Landreth Timber, Inc. This information may or may not be true. No figures have been included for bank borrowing, bank repayment nor interest. No federal income tax expense has been shown. Because of the impossibility of ensuring that this projection will be met, and as there are so many variables, I cannot express an opinion thereon. It is recommended that you have people who are experts in production and marketing of lumber review the attached forecast and its underlying assumptions before taking any action thereon. This material has been prepared with the understanding that it is only for use by you, First National Bank of Boston and Rainier National Bank and that it will not be released to third parties. This cash flow projection has been prepared after a 2 day visit in Wenatchee, WA and Tonasket, WA with Mr. Landreth and his CPA. It has been prepared under very short notice and as a result critical information may have been omitted or mis-stated.

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## LANDRETH TIMBER COMPANY, INC.

MR. LANDRETH'S CONSERVATIVE DAILY  
ANALYSIS OF SALES MIX AND SELLING PRICES  
 (BASED ON FULL, EFFICIENT PRODUCTION OF MILL)

SALES m FEET		\$ SELLING PRICE	\$ TOTAL SALES
4	CLEARs (rough green R List clear, planed)	400	1,600
52	LANSTOCK	300	15,600
16	2 and better FRAMING LUMBER. Best grade.	250	4,000
6.4	#3 FRAMING LUMBER. Intermediate.	140	896
1.6	#4 FRAMING LUMBER. Economy.	60	96
20	TIMBERS	270	5,400
-	CHIPS	--	<u>300</u>
100.0			27,892
	Less: Contingency 15%		<u>4,184</u>
			<u>23,708</u>
	Per month = 21 x 23,708 (2,100 m feet)		\$497,700
	Average selling price per m feet:		\$ <u>237</u>



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LOGS NEEDED FOR PRODUCTION:	LOGS IN M FEET	OVER- RUN	M FEET LUMBER OUT	AVERAGE SELLING PER M FEET	SALES	CASH RECEIVED IN CURRENT MONTH 1/4 in current month 3/4 in next month
NOVEMBER 1977						11,000 (per Landreth)
OCTOBER 1977						
Helle Mill:						
Single shift 1st week. 65% production = 5 1/2 days x 65% x 21m	72					
Single shift 2nd week. 80% production = 5 1/2 days x 80% x 21m	88					
Double shift last two weeks full production = 2 x 10 1/2 days x 21m	441 601	1408	841	237	199,317	99,639
NOVEMBER 1977						
Helle Mill:						
Double shift = 2 x 21 days x 21m per day	882	.04	1,233			
Maxi-Mill Single Shift						
1st Month 40% capacity = 40% x 21 x 30m	326 1,210	1804	590 1,923	237	432,525	315,927
DECEMBER 1977						
Helle Mill:						
Same as November 1977	832	1404	1,235			
Maxi-Mill:						
Balance to make 1,260m total (Approximately 45% capacity), (70% possible capacity)	374 1,260	1004	510 1,915			
Only operating 3 weeks = 3 x 5 1/2 21	945		1,436	237	340,342	385,429

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LOGS NEEDED FOR PRODUCTION (CONT.)	LOGS IN M FEET	OVER- RUN	M FEET LUMBER OUT	AVERAGE SELLING PER M FEET	SALES	CASH RECEIVED IN CURRENT MONTH 1/4 in current month 3/4 in next month
JANUARY 1978						
Maxi-Mill:						
85% Production = 85% x 21 x 39m	696	1808	1,253			
Helle Mill:						
Balance Single Shift only 21 days x 21m	441 1,137	1408	617 1,870			
Only Operating 3 weeks 3 x 5 1/2 21	853		1,405	237	332,511	376,422
FEBRUARY 1978						
Same as January 1978 (3 weeks)	853	-	-	-	332,511	332,511
MARCH 1978						
Maxi-Mill:						
100% Production Single Shift 21 days x 39m	819	1808	1,474			
Helle Mill:						
100% Production Single Shift 21 days x 21m	441 1,260	1408	617 2,091	237	495,567	495,567
APRIL - AUGUST 1978						
Same as March 1978	1,260				495,567	495,567

## SCHEDULE OF LOGS REQUIRED FROM FOREST FOR EACH MONTH

(in feet) A	B LOGS IN INVENTORY AT BEGINNING MONTH	C LOGS REQUIRED IN INVENTORY (AVERAGE 2 TIMES NEXT MONTH'S PRODUCTION)	C - (A - B) LOGS REQUIRED IN MONTH FROM FOREST	COST PER M. FEET COST PER M. FEET (ONE MONTH TIME LAG FOR PAYMENT)	COST OF LOGS FROM FOREST
1977					
Sept.	1,200	1,200	-	-	-
Oct.	1,200	1,815	1,214	\$120 (Excluding logging)	145,680
Nov.	1,815	1,890	1,285	786 @ 120 = 94,320 499 @ 170 = 84,830	179,150
Dec.	1,800	1,706	*1,450	\$170	246,500
1978					
Jan.	1,700	2,500 est.	*1,450	\$170	246,500
Feb.	2,500	3,000 est.	*1,450	\$170	246,500
March	3,000	1,740	** Mill		
April	1,740	2,520	*1,450	\$170	246,500
May	2,520	2,520	1,260	\$170	214,200
June	2,520	2,520	1,260	\$170	214,200
July	2,520	2,520	1,260	\$170	214,200
August	2,520	2,520	1,260	\$170	214,200

\*Smoothed Production  
\*\*Spring 78 run-off -- forest roads closed

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## LANDRETH TIMBER COMPANY, INC.

## SCHEDULE OF MONTHLY MANAGEMENT SALARIES

	(ANNUAL)	LENGTH OF SERVICE
President/Marketing Director	60,000	-
Plant Superintendent George Worrell	21,000	6 months
General Superintendent and Office Manager L. Don Zabreznik	18,000	13 years
Woods Superintendent R. Lester Shertenlieb	18,000	13 years
Saw-mill Foreman	16,000	12 years
Planer-mill Foreman	16,000	12 years
Woods Foreman	18,000	2 years
Contingency (including Mr. Landreth as consultant)	15,000 <u>182,000</u>	-
MONTHLY SALARIES	<u>182,000</u> 12 = \$15,167	

SCHEDULE OF APPROXIMATE MONTHLY HOURLY  
EMPLOYEES WAGES (ONE SHIFT)

	(HOURLY)
General and office	50.25
Saw-mill	103.25
Planer-mill	54.50
Woods - logging and road-building approx. \$50.00 but covered in cost of logs landed at mill (loggers paid by piece work)	-
Contingency 4 people at \$6.00	<u>24.00</u> 232.00
Wage increase per Mr. Landreth - 10%	<u>23.00</u>
	255.20

MONTHLY HOURLY WAGES \$255.20 x 8 hrs. x 21 days = \$42,874



LANDRETH TIMBER COMPANY, INC.  
ASSUMPTIONS

1. Maxi mill to handle 70% of lumber (not logs) with 80% overrun.
2. Helle mill to handle 30% of lumber (not logs) with 40% overrun.
3. Maxi mill starts 11/1/77 and takes until 1/31/78 to be fully efficient.
4. Helle mill starts 10/1/77 and takes 2 weeks to achieve full efficiency. For the initial period, the Helle mill will run two shifts.
5. Expected full and efficient production on both mills starts 2/1/78, assuming log availability and reasonable weather for working at mill.
6. Efficient and optimum operation requires logs large in size and suitable for lamstock. Except for initial 2 or 3 months of Helle mill, only a one-shift operation has been scheduled.
7. A working month consists of 21 working days.

8.

Optimum Level of Mill	m Feet Daily Log Input	Overrun	m Feet Daily Lumber Output
Maxi	39,000	80%	70,000
Helle	21,000	40%	30,000
	<u>60,000 (1,260 m monthly)</u>		<u>100,000 (2,160 m monthly)</u>
	66.6% (Average)		

9. Owing to lack of capacity of present kiln drier, Mr. Landreth estimates that 20% of production will be rough green timbers—these require no drying nor planing.
10. Selling prices are based on Mr. Landreth's figures which he terms conservative; Mr. Landreth indicated

that he expects all the production can be sold at the selling prices indicated.

11. Accounting and taxes include \$3,500 cash forecast and pre-acquisition comfort-letter work, set up of financial statements on computer and unaudited monthly financial statements and management advisory services.
12. Consulting includes cost of foresters, engineers, etc.
13. Repairs and supplies were \$43,717 for 1/1/77—6/30/77, i.e., \$7,000 monthly including repairs for fire damage. The present best guesstimate is \$10,000/month in production as the mill equipment is new.
14. Business taxes include 4% of sales for business and occupation taxes for Washington State plus \$20,000 for real and personal property taxes.
15. Shipping costs are not included. Selling prices are FOB the Tonasket, WA mill. Shipping labor is already included under hourly wages.
16. Travel is based on *monthly* expenses of the president for air-travel (\$1,000), hotels (10 days @ 30 = \$300) and meals (10 days @ 30 = \$300): \$1,600 + \$400 contingency = \$2,000.
17. No capital expenditures are shown beyond the \$500,000 needed to complete the Steel Building, Maxi Mill and Helle Mill. Approximately \$705,000 insurance proceeds were received for the 1977 fire damage and Mr. Landreth expects to spend approximately \$800,000 on replacements.
18. There is a 30 day production cycle—1 week for logging, 1 week for hauling, 1 week for sawing and edging, 1 week for kiln drying/baling, ready for shipment.

19. All equipment, vehicles and buildings will not need replacing in the first year of the new operation. No expenditures have been shown for possible kiln drier and edger additions.

20. Payroll Taxes—These have been estimated at:

5.85% Social Security

1.00% Federal Unemployment (including  
WA State percentage)

2.00% Employment Security

20.00% Industrial Insurance 88¢ hr.—sawmill,  
but say \$1.00 due to expected rate  
increases)

---

28.85% But say 30%

---

21. Mr. Landreth indicated that there are two unrecorded credits on his books. One is for approximately \$50,000 for forest roads which have been built and for which the U.S. Forest Service will give credit against future purchases of timber. This has not been shown as a credit in the cash flow projection. The other credit, or hidden asset, is for 2,000,000 ft. of logs which have been cut, skidded and decked, but not scaled in the forest; at \$50 per m feet, this is \$100,000 which is not included in the August 31, 1977 financial statements; however, this \$100,000 has been taken into account in the cash flow projection.

22. According to Mr. Landreth, the cash flow is sufficient so that the proceeds from sales of lumber are received in time to make payment to the U.S. Forest Service for the logs which have been used to produce the same lumber which has been sold.

23. Mr. Landreth believes that it would be straight forward to get a performance bond to avoid paying the U.S. Forest Service in advance for logs hauled

past the scales. His cost estimate is \$1,800 annually and he indicates that he gives a personal guarantee to the bonding company for performance on timber contracts. Therefore, it is assumed that payment on such contracts will continue in a similar manner under new ownership.

24. A contingency amount of \$5,000 monthly has been included.

October 14, 1977

Mr. Samuel S. Dennis III  
Hale and Door (sic)  
28 State Street  
Boston, Mass. 02109

LANDRETH TIMBER COMPANY, INC.

Dear Sam,

I am attaching a memo on internal control matters as a result of our September 29 and 30 visit to the Company.

Other items:

1. Tom Wood asked me for average selling prices over the last 4 years—from the CPA's figures. These came out at \$183.40 m ft. for planed lumber and \$320.24 m ft. for rough lumber (including lamstock).
2. I have attached a copy of the 9/30/77 inventory showing 1,045 m. ft. of logs.
3. Personal property has been valued as of 1/1/76 by the county assessor at \$526,157 at 14.679 mils levy rate.
4. 1977 real property has been valued as of 1/1/76 by the county assessor at \$102,576 (10 acres for mill and land improvements). The other 56.7 acres has an assessed value of \$5,103 as of 1/1/76.
5. I have enclosed our billing for the financial review, which is within our estimate.



6. Jack Branch mentioned that he had forwarded our August 9 billing of \$2,005.13 for payment by you less the \$1,000.00 paid by him on account on 9/15/77. This leaves \$1,005.13 for payment. A copy of the billing is attached.
7. I will call you shortly on various pending matters.

Sincerely,

/s/ Peter

PETER H. TOWNSEND, President

October 14, 1977

Memo to: Mr. Sam S. Dennis II

From: Peter Townsend

*Subject: Landreth Timber Company, Inc.—  
Internal Control*

The following are observations following our visit to the Company in Tonasket on September 30 and 31, 1977:

1. It appeared that Mrs. Vivienne Burse, the book-keeper, has a good grasp of the accounting function and that she should be able to provide the necessary timely general ledger data for accurate monthly financial statements, as well as being able to handle the accounting work load.
2. No time cards are used. Hours are kept by each foreman for his own people in a book.
3. No employee hourly rates or rate history are shown on employee wage record cards.
4. Purchase orders are 2-part only—Ivan does not use them. However, the mill manager and officer manager do. It is recommended that three part P.O.'s be used, with the extra copy being a follow-up and matching copy, to eventually be filed with purchase invoices. It is also suggested that a receiving log for invoicing goods be established.
5. Employees get lumber at retail less 10%.
6. Before invoices are paid it is recommended that a stamp be used indicating P.O. checked against invoice, date goods delivered, initials of receiving department or person, prices and extensions checked, date invoice paid, account number to be charged, etc.
7. Cash discounts are being taken on purchases where applicable. No separate account of these discounts is kept.

8. Ivan approves timber purchase statements and indicates which payables are to be paid and when.
9. By showing monthly totals of invoices in, cash paid, opening and closing balances, an agreed accounts payable account could be prepared monthly.
10. At present Ivan signs most of the checks, or in his absence Mr. Ben Zabreznik signs. Only one signature is required on checks. For improved internal control it is recommended that say 2 of any 3 or 4 signatures be required for each check. Ivan is the only signatory on the savings account.
11. It is suggested that a monthly accounts receivable aging list be prepared.
12. It is suggested that a set of corporate objectives, an organization chart and job descriptions and responsibilities be prepared.
13. It is suggested that a second person double check customer invoices.
14. In order to ensure that all sales are invoiced and accounted for, it is suggested that a log of unit tags compared with sales invoice numbers be kept independently of the shipping section and that all unused tags be kept under lock and key.
15. All cancelled invoices should be entered in the sales register as void so that it can be seen that each invoice by number has been accounted for.
16. Invoices could be imprinted with "2% discount for payment within 10 days of invoice date". At present, this information is typed.
17. Ivan opens all mail and deposits all checks. It appears that further subdivision of these and other tasks which he performs will need to be made to other office people with a view to obtaining better internal control.

18. Ivan and Don Zabreznik have the complete safe combination. Vivienne has the partial combination which is the one normally used. There is a fidelity bond for key employees.
19. I have a rough schedule of Company insurance coverage but I believe that it would be advantageous to have a complete insurance schedule showing risks covered, amount covered, carriers, deductibles, period covered, premiums, etc.
20. Don and Vivienne both handle petty cash. It is suggested that one person be given sole responsibility. Petty cash slips should preferably be used for all transactions.
21. As Ivan is so close to the operation he has not had any special sales, costs or expense schedules prepared. A reporting system for this and similar matters should be established.
22. A good system of internal control should be established for sales of sawdust, chips, etc.
23. A formal system of preventive maintenance with record cards for each piece of equipment should possibly be established. To my knowledge there is no plant ledger listing all equipment by number.
24. There are no fireproof cabinets for important books, documents and records.
25. A capital expenditure plan and an operating budget should be established.
26. Employee benefits/vacations may need reviewing.
27. A tighter control of paperwork to account for logs between scaling and being received at the mill could be established.
28. It may be prudent to rent a safe deposit box at the local bank. Many important papers are presently kept at Ivan's home.

- This list may not be comprehensive as only a short visit was made. A more in depth review of this could be made at a later date.

184 Select	576
184 Laminated	1794
184 Utility	1075
184 Whitewood	
186 Select	179
186 Utility	19
186 Whitewood	16
188 Select	575
188 Laminated	1787
188 St + Lam.	1400
188 Utility	200
282 Select	1575
283 Select	1520
283 St + Lam.	1011
283 Economy	1240
284 Select	14
284 Laminated	750.8
284 Economy	17617
284 Whitewood	490
286 Select	132
286 #1+2	7952
286 #4	3300
286 Whitewood	1250
288 Select	1557
288 #4	1371
288 Whitewood	110
288 Select	700
288 #4	2500
288 #4	700
Rough lumber	24004
	220872
Fas & Larch Logs	67000
Spruce Logs	12000
Pine Logs	20000
	107000



PETER H. TOWNSEND

[Address Omitted]

Mr. Samuel S. Dennis II  
Hale and Door (sic)  
28 State Street  
Boston, Mass. 02109

October 18, 1977  
#931

## For Professional Services

9/30-10/17 Visit Landreth Timber Company, Inc. in  
Tonasket, WA by Mr. Townsend and Miss Richards.  
Make limited financial review as per our September  
21, 1977 letter. Prepare report on limited financial  
review performed. Prepare memo on internal control  
findings. Review cash flow projection assumptions.

Discuss results of findings with you in Federal Way.	2,150.00
Nights hotel bills	116.67
Meals	50.19
Mileage—560 miles at 15¢	84.00
Phone calls	11.98
	<u>\$2,412.84</u>

PETER H. TOWNSEND

[Address Omitted]

August 9, 1977

Mr. Jack Branch, President  
Timber West, Inc.  
300 120th NE  
Bldg. 3, Suite 200  
Bellevue, WA 98005

Re: Landreth Timber Co.

Aug. 1977

Visit your offices in Bellevue and discuss  
proposed acquisition of Landreth Timber  
Co. with you and Mr. Ivan Landreth. Vari-  
ous phone conversations with you. Travel  
to Wenatchee, WA to visit Mr. Pat Peyton,  
CPA to gather additional financial and tax  
information on the company. Visit To-  
nasket, WA to review operating and finan-  
cial matters with Mr. Landreth. Prepare de-  
tailed report for you covering my findings.

1,800.00

Disbursements: Auto—560 miles at 15 cents	84.00	
Hotel—Wenatchee	34.45	
Hotel—Omak	27.85	
Meals—Evening Fri.—Wenatchee	22.00	
Breakfast and lunch Sat.—Tonasket	13.00	
Dinner Sat.—Omak	9.83	
Breakfast Sun.—Twisp	8.00	
Lunch Sun.—Concrete	6.00	205.13
		<u>2,005.13</u>
		<u>1,000.00</u>
		<u>\$1,005.13</u>

## ONE Old National Bank

October 3, 1977

Peter Townsend & Associates  
 Certified Public Accountants  
 31003 18th Avenue South  
 Federal Way, Wa 98003

Gentlemen:

Mr. Ivan Landreth of Landreth Timber Company, Inc., has asked us to furnish the following information in connection with the financial review your firm is making of his Corporation. The following is taken from our records.

The Corporate checking account balance was \$577.36 on August 31, 1977, and \$577.36 on September 30, 1977.

The loan against the sawmill, which is 90% guaranteed by the Small Business Administration was as follows:

On August 31, 1977, the balance was \$253,094.74. Payment schedule called for \$2,200.00 per month on the twenty fifth of each month. Interest rate was 9 $\frac{1}{4}$ % APR. Accrued interest from August 24, 1977 was \$448.98.

On September 20, 1977, this loan was revised and re-termed. As of September 30, 1977, the balance was \$249,934.90, payable \$5400.00 per month at 9 $\frac{1}{2}$ % APR. Payments are due on the twenty fifth of each month with the balance in full by August 25, 1982. Accrued interest to September 30, 1977 was \$130.13.

Should you need further information, please let us know.

Sincerely,

/s/ H. W. Burse  
 H. W. BURSE  
 Manager

HWB/aj  
 cc: Ivan Landreth

PETER H. TOWNSEND

[Address Omitted]

October 14, 1977

Mr. Ivan K. Landreth—President  
 Landreth Timber Co., Inc.  
 Box 505  
 Tonasket, WA 98855

Dear Ivan,

To complete our analysis of depreciation and investment credit would you please let us have a detailed listing of fixed assets of Landreth Timber Co. We talked with Mr. Pat Peyton regarding the easiest way to obtain this information. He suggested taking copies of the yearly fixed asset cards for the assets and years as follows:

<u>General Ledger Description</u>	<u>Year of Purchase</u>	<u>Amount</u>
Logging & Yard Equipment		
Road Equipment	1967	28,129
Road Equipment	1970	25,708
Road Equipment	1971	4,511
Log Yard Equipment	1967	32,591
Log Yard Equipment	1970	2,500
Logging Equipment	1973	19,000
Yard		
Yard Equipment	1968	7,461
Yard Equipment	1969	13,743
Yard Equipment	1970	3,876
Yard Equipment	1972	433
Yard Equipment	1973	9,335

If the general ledger cards do not show the detailed costs and assets, would you please ask Vivienne if she could make the necessary analysis. We need details of the actual machines and equipment, not merely references in the general ledger to the check register or sales journal.

One other item, we have not yet received the bank confirmation from Mid Valley Bank. Can you please expedite this. We did get the confirmation from Old National Bank.

Sincerely,

/s/ PHT  
PETER H. TOWNSEND

EXHIBIT G

PETER H. TOWNSEND

[Address Omitted]

LANDRETH TIMBER COMPANY, INC.  
CASH FLOW PROJECTION  
FOR THE TWELVE MONTHS ENDED  
OCTOBER 31, 1978  
(UNAUDITED)

November 4, 1977

Mr. Samuel S. Dennis III  
Hale and Dorr  
28 State Street  
Boston, Mass. 02109

I have prepared the attached unaudited Cash Flow Projection for the above period based on information given to me by Mr. Ivan Landreth, President of Landreth Timber Company, Inc. This information may or may not be true. Because of the impossibility of ensuring that this projection will be met, and as there are so many variables, I cannot express an opinion thereon. It is recommended that you have people who are experts in production and marketing of lumber review the attached forecast and its underlying assumptions before taking any action thereon. This material has been prepared with the understanding that it is only for use by you, First National Bank of Boston and Rainier National Bank and that it will not be released to third parties. It has been prepared under very short notice and as a result critical information may have been omitted or mis-stated.

Peter Townsend and Associates



## CONTENTS OF PROJECTION

## SINGLE SHIFT

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LAUREN TITNER COMPANY, INC. - SEE ACCOUNTANTS REPORT, ASSUMPTIONS, AND NOTES WHICH ARE AN INTEGRAL PART OF THIS PROJECTION. SAME BASED AS CASH FLOW DATED 4/14/77.

11/24/77

CASH FLOW PROJECTION - UNAUDITED

FROM NOVEMBER 1, 1977 TO OCTOBER 31, 1978

	MONTH 1	MONTH 2	MONTH 3	MONTH 4	MONTH 5	MONTH 6	MONTH 7	MONTH 8	MONTH 9	MONTH 10	MONTH 11	MONTH 12	TOTAL
<b>CASH INFLOWS</b>													
SALES	11,000	99,589	315,400	326,479	330,422	332,511	410,233	495,557	495,557	495,557	495,557	495,557	4,513,818
LOAN - BARNER BANK - 9-1/2%	150,000	0	1,000,000	0	0	0	0	0	0	0	0	0	1,150,000
LOAN - OTHER SOURCE - 8-1/2%	500,000	0	0	0	0	0	0	0	0	0	0	0	500,000
LOAN - DEBENTURES/BOLTON	0	200,000	310,000	0	0	0	0	0	0	0	0	0	510,000
STOCK - DEBENTURES/BOLTON	200,000	0	0	0	0	0	0	0	0	0	0	0	200,000
<b>TOTAL INFLOWS</b>	<b>911,000</b>	<b>299,589</b>	<b>3,075,400</b>	<b>326,479</b>	<b>330,422</b>	<b>332,511</b>	<b>410,233</b>	<b>495,557</b>	<b>495,557</b>	<b>495,557</b>	<b>495,557</b>	<b>495,557</b>	<b>9,233,315</b>
<b>CASH OUTFLOWS</b>													
SALARIES MANAGEMENT	15,167	15,167	15,167	15,167	15,167	15,167	15,167	15,167	15,167	15,167	15,167	15,167	182,304
SALES - GENERAL & OFFICE	32,374	42,374	42,374	42,374	42,374	42,374	42,374	42,374	42,374	42,374	42,374	42,374	508,438
WILL LARSEN LSC COST	3,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	10,000
TITNER STAMPEE DEPOSITS	0	0	0	0	0	0	0	0	0	0	0	0	0
DISCOUNTS ALLOWED - 2%	0	0	0	0	0	0	0	0	0	0	0	0	0
PAYROLL TAXES	200	1,393	6,314	7,254	6,708	6,352	8,281	9,911	9,911	9,911	9,911	9,911	87,474
INSURANCE - ALL KINDS	9,500	12,000	10,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	132,000
REPAIRS AND SUPPLIES	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	120,000
BUSINESS TAXES	0	0	0	0	0	0	0	0	0	0	0	0	0
EQUIPMENT RENTAL/LEASE	4,000	5,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	84,000
LEGAL	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	24,000
OFFICE SUPPLIES AND EXPENSES	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
TRAVEL	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	24,000
AUTO AND TRUCK	500	500	500	500	500	500	500	500	500	500	500	500	6,000
UTILITIES AND TELEPHONE	500	500	500	500	500	500	500	500	500	500	500	500	6,000
ACCOUNTING TAX	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
BUSINESS PROVISION	150	150	150	150	150	150	150	150	150	150	150	150	1,800
ADVERTISING	400	600	800	800	800	800	800	800	800	800	800	800	9,600
CONSULTING	500	500	500	500	500	500	500	500	500	500	500	500	6,000
CAPITAL EXPENDITURES	90,000	13,000	0	0	0	0	0	0	0	0	0	0	103,000
CONTINGENCY	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
PAYMENT TO MR. LAUREN - SALE	0	0	0	0	0	0	0	0	0	0	0	0	0
REPAY LAUREN NOTE & INTEREST	0	0	0	0	0	0	0	0	0	0	0	0	0
REPAY LOANS TO LOCAL BANKS	405,000	0	0	0	0	0	0	0	0	0	0	0	405,000
INTEREST PAID - OLD PRINCIPAL	0	0	0	0	0	0	0	0	0	0	0	0	0
INCOME TAX - ONLY REQUIRE	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL OUTFLOWS</b>	<b>572,161</b>	<b>161,777</b>	<b>3,231,339</b>	<b>5,221</b>	<b>319,135</b>	<b>330,229</b>	<b>273,837</b>	<b>182,375</b>	<b>182,375</b>	<b>182,375</b>	<b>182,375</b>	<b>182,375</b>	<b>7,449,259</b>
<b>CASH BEGINNING OF MONTH</b>	<b>7,000</b>	<b>231,519</b>	<b>319,420</b>	<b>103,951</b>	<b>229,169</b>	<b>149,146</b>	<b>25,637</b>	<b>33,330</b>	<b>34,711</b>	<b>627,483</b>	<b>539,145</b>	<b>700,337</b>	
<b>CASH END OF MONTH</b>	<b>231,519</b>	<b>319,420</b>	<b>103,951</b>	<b>229,169</b>	<b>149,146</b>	<b>25,637</b>	<b>33,330</b>	<b>34,711</b>	<b>627,483</b>	<b>539,145</b>	<b>700,337</b>	<b>777,255</b>	

*Landreth Timber Company, Inc. (L.T.C.)**Revised Cash Flow Projection**November 1, 1977 thru October 31, 1978 (Single Shift)**New assumptions from original cash flow projection dated 9/15/77*

1. It has been assumed that the new L.T.C. will acquire the stock of the old L.T.C. on approximately November 15, 1977 and will then immediately liquidate the old L.T.C. and merge its assets with the new L.T.C.
2. Production will only start on December 1, 1977 under the new L.T.C.
3. For income tax purposes it has been assumed that:
  - a) \$1,523,000 is the fair market value of new saw-mill equipment (excluding building) and that this will qualify for 10% investment tax credit of \$152,300 in the new L.T.C. It has been assumed that as this equipment has not been placed into service with the old L.T.C., it will be first placed into service in the new L.T.C. and therefore qualify for the above \$152,300 investment tax credit.
  - b) There will be approximate tax loss for 1/1/77—11/30/77 of approximately \$302,000—this loss has been arrived at by continuing the trend of the 5/30/77 and 8/31/77 unaudited financial statements.
  - c) On liquidation of old L.T.C. there will be approximately \$46,614 of income tax to be paid consisting of (i) tax on \$352,000 depreciation recapture less \$302,000 operating loss in 3(b) above, (ii) \$21,000 investment tax credit recapture, and (iii) \$15,000 tax as contingency.

Because of the tax complexity and questions of law, the necessary tax schedules and assumptions have been forwarded to Mr. Dennis' law firm for confirmation by their tax department.

4. After the initial capital expenditures of approximately \$865,000 have been made through December 1977, an extra \$80,000 has been "guesstimated" to be spent later in the fiscal year ended 10/31/78.
5. This revised cash flow assumes that there has been a two month start-up slippage from the original cash flow prepared on 9/15/77 due to a) Mr. Landreth's later than forecast construction completion, and b) the need to not put new equipment into service until it is owned by new L.T.C. Apart from the fact that a) receipts for share capital and loans, and b) payments for stock purchase price, bank interest and local repayments have been shown in this projection, all other assumptions of the 9/15/77 cash flow projection apply and should be read together with these additional notes and assumptions.
6. For cash flow purchases old L.T.C. and new L.T.C. have been treated as one.
7. According to Mr. Landreth \$61,000 of capital expenditures were made in October 1977. As at 9/30/77 Mr. Landreth estimated that there was \$164,000 of remaining capital expenditures to be made. This leaves a balance of \$103,000 plus a contingency of \$30,000 to be spent in November and December 1977.
8. No dividends have been included in the cash flow projection.
9. For simplicity, interest on loans (including an estimated \$510,000 from Mr. Dennis and Mr. Bolton have been shown as having an average rate of 9¼% interest paid quarterly, with no principle payments starting until 1/1/79.
10. No interest received has been shown on cash balances which are excess to operational needs.

11. According to our attached tax computation there will be no income tax payable on the profits for the year ended October 31, 1977 except for the recapture of \$46,614 in paragraph 3 c) above.

LANDRETH TIMBER COMPANY, INC.Income Tax Calculations:

Assume liquidate old company on 12/1/77 (No operations in Nov.)	1/1/77 thru 6/30/77	12/1/77 thru 8/31/77	Diff. - 2 months July/Aug. 77
Loss in 1977	73,622	159,153	85,531
Loss per month - average $\frac{85,531}{2} = 42,766$			
<hr/>			
Actual loss 1/1/77 - 8/31/77	(159,153)		
3 months extra loss thru 11/30/77 3 x 42,766	(128,298)		
Estimated loss 1/1/77 - 11/30/77	\$(287,451)	Assuming no Nov. 77 operations	
Extra adjustments re income in Nov.	( 15,000)		
Expected 1977 tax loss thru 11/30/77	(302,451)		
Expected depreciation recapture per schedule	352,011		
To be recaptured	49,560	1977 Taxable Income	
Average 21% tax	10,408		
Investment tax credit recapture	21,206		
Contingency tax	15,000		
Total Income Tax Payable February 1978	\$ 46,614		



Depreciation and depletion summary for year ended 10/31/78

Fair Market value 12/21/77 per appraisal	Method	Life (years)		Single Shift	Double Shift
		Single Shift	Double Shift		
<b>Buildings</b>					
New construction	150% SL	20	20	11,025	11,025
Existing buildings		9	9	5,111	5,111
<b>Equipment</b>					
New construction (ignored bonus depreciation)	200%	7	6	445,057	519,233
Existing equipment	150%	4 yrs.	3	212,650	283,400
Mobile and highway Equipment - Existing	150%	4 yrs.	3	89,250 762,033	119,000 937,769
Timber cutting contracts		as consumed	(13/30)	321,100	(20/30) 494,000
Inventory					
Land and improvements					
				\$1,081,093	\$1,431,769

146

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Landreth Timber Company, Inc.  
(Single Sheet)Draft Projected Income Statement  
(Unaudited)

12 Months Dated 10/31/78

## Sales

	<u>\$</u>
	4,373,815
Salaries	182,004
Wages	504,488
Cost of logs	1,959,430
Less: Build up of inventory (extra 1,200m logs and some lumber)	(254,000)
Stampage deposits	16,000
Cash discounts	87,474
Payroll taxes	151,344
Insurance	45,000
Repairs	120,000
Business taxes	41,870
Equipment rental	100,000
Legal	19,000
Office supplies	12,000
Travel	24,000
Auto and truck	6,000
Utilities and Phone	72,000
Accounting, tax and financial advice	14,300
Dues and subscriptions	4,000
Business promotion	1,800
Advertising	7,200
Consulting	6,900
Contingency	60,000
Interest - Landreth note (\$20,000)	3,000
Interest - Legal banks	5,000
Interest on acquisition indebtedness	310,235
Depreciation	3,499,045
Depletion of timber contract	762,993
	<u>321,100</u>
Net loss for year - therefore no income tax payable	<u>4,563,138</u> <u>\$(200,323)</u>

(Figures are taken from 11/3/77 cash flow projection and from draft income tax computations.)

CASH FLOW PROJECTION - UNAUDITED

FROM NOVEMBER 1, 1977 TO OCTOBER 31, 1978

	MONTH 1	MONTH 2	MONTH 3	MONTH 4	MONTH 5	MONTH 6	MONTH 7	MONTH 8	MONTH 9	MONTH 10	MONTH 11	MONTH 12	TOTAL
<b>CASH INFLOWS</b>													
SALES	0	0	0	0	0	0	0	0	0	0	0	0	0
LOAN - MATHEW BANK - 9-1/2%	0	0	0	0	0	0	0	0	0	0	0	0	0
LOAN - OTHER SOURCE - 8-1/2%	0	0	0	0	0	0	0	0	0	0	0	0	0
LOAN - DEPOSIT/ROLLIN	0	0	0	0	0	0	0	0	0	0	0	0	0
STOCK - DEPOSIT/ROLLIN	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL INFLOWS	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>CASH OUTFLOWS</b>													
SALARIES MANAGEMENT	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
WAGES - GENERAL S. OFFICE	47,161	47,161	47,161	47,161	47,161	47,161	47,161	47,161	47,161	47,161	47,161	47,161	565,932
WELL-MAINTAINED LOG COST	13,916	13,916	13,916	13,916	13,916	13,916	13,916	13,916	13,916	13,916	13,916	13,916	166,992
THINER STUMPAGE DEPOSITS	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
DISCOUNTS ALLOWED - 2%	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
PAYROLL TAXES	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	2,200	26,400
INSURANCE - ALL KINDS	10,200	10,200	10,200	10,200	10,200	10,200	10,200	10,200	10,200	10,200	10,200	10,200	122,400
REPAIRS AND SUPPLIES	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
BUSINESS TAXES	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
EQUIPMENT RENTAL/LEASE	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
LEGAL	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
OFFICE SUPPLIES AND EXPENSES	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
AUTO AND TRUCK	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
UTILITIES AND TELEPHONE	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
ADVERTISING, TRAVEL	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
INSURANCE AND SUBSCRIPTION	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
BUSINESS PROTECTION	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
ADVERTISING	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
CONSULTING	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
CAPITAL EXPENDITURES	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
PAYMENT TO MR. LAURENCE - SALE	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
REPAY LAURENCE NOTE & INTEREST	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
REPAY LAURENCE TO LOCAL BANK	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
INTEREST PAID - 2% PRINCIPAL	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
INCOME TAX - ONLY RECEIPT	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
TOTAL OUTFLOWS	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	1,948,920
<b>CASH REQUIREMENT OF MONTH</b>	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	162,410	1,948,920
<b>CASH BALANCE 12/31/77</b>	0	0	0	0	0	0	0	0	0	0	0	0	0

Landreth Timber Company, Inc.

Schedule of extra monthly receipts as result of double shift

Logs Overrun Lumber S.P. Sales Mar. 78 April 78 May 78 June 78 and further

1) Mar. 78 Assume Helle Mill reverts to double shift full time Extra

Less: 13% efficiency decrease

375m @ 140% = 525m @ 237 = \$124,425 61,213 124,425 125,425 124,425

2) May 78 Assume Moxi-Mill double shifts full time

Less: 15% efficiency decrease

696m @ 180% = 1,253m @ 237 = \$296,961 148,480 296,961

Total Extra Collections

61,213 124,425 274,905 421,386

LANDRETH TIMBER COMPANY, INC.EXTRA WAGES PAYMENTS MONTHLY, RE SECOND SHIFT(i) Re Helle Mill Extra Shift

Hourly employees wages  $\frac{617m}{2,091m}$  extra board feet lumber  
 $\times \$42,874 = \$12,651$

\$42,874 is taken from Schedule of Approximate Monthly Hourly Employees Wages (one shift)  
 attached to 9/14/77 Cash Flow Forecast

+ 10% Night Shift Premium

(ii) Re Maxi-Mill Extra Shifts

Hourly employees wages  $\frac{1,474m}{2,091m}$  extra board feet lumber  
 $\times \$42,874 = 30,223$   
 (as above)

+ 10% Night Shift Premium

Total extra monthly wages with double shift on both mills

150  
13,916

1,265

33,245

\$47,161

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Landreth Timber Company, Inc.Second Shift Income Tax Calculation Y/E 10/31/78

Extra cash flow re second shift per projection	856,324
Add: Capital expenditure	<u>100,000</u>
	956,324
Less: Tax loss on first shift	(209,323)
Extra depreciation on 2nd shift	(174,776)
Extra depletion on 2nd shift	<u>(172,900)</u>
	399,325
Tax @ 42% (including capital gain on timber)	167,717
Less: Investment tax credit -	Qualified
	Expenditure
New equipment	1,522,800
Used equipment (\$566,800)	<u>100,000</u> (limit)
Less: Investment tax credit	1,622,800 @ 10%
	<u>162,280</u>
Tax to pay on 1/15/79	\$ 5,437



THE FIRST AND SECOND PARTS OF THIS PUBLICATION, FIRST AND SECOND PARTS, WERE PUBLISHED.

11/03/77

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Case for Protection - 01/01/2019

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*Landreth Timber Company, Inc.*

Assumptions on combined single and double shift cash flow projection for thhe year ended 10/31/78

Refer to assumptions for a) single shift, and b) double shift on pages 2 and 8 respectively.

## EXHIBIT H

PETER H. TOWNSEND

[Address Omitted]

LANDRETH TIMBER COMPANY, INC.  
 A DELAWARE CORPORATION  
 PROJECTED BALANCE SHEET  
 AS OF NOVEMBER 17, 1977  
 (UNAUDITED)

November 16, 1977

Mr. Samuel S. Dennis III  
 Hale and Dorr  
 28 State Street  
 Boston, Mass. 02190 (sic)

I have prepared the attached unaudited projected Balance Sheet as of November 17, 1977 based on (a) financing information given to me by you and Mr. Tom Wood of Rainier National Bank, (b) current assets and current liabilities given to me by Mr. Ivan Landreth, (c) appraisal information provided in Mr. Pease's October 21, 1977 report on the Company, and (d) other general information from earlier unaudited cash forecasts and reports made to you by me. I cannot express an opinion on this Balance Sheet because it is a projection and may therefore not be achieved and because the information has not been audited by me. This material has been prepared with the understanding that it is only for use by you, First National Bank of Boston and Rainier National Bank and that it will not be released to third parties.

Peter Townsend and Associates

LANDRETH TIMBER COMPANY, INC.  
 PROJECTED BALANCE SHEET NOVEMBER 17, 1977  
 (UNAUDITED) (AFTER CLOSING OF STOCK TRANSFER)

ASSETSCurrent Assets

Cash in bank (\$4,000 in Tonasket, \$20,000 new account)	24,000
Accounts receivable, trade	10,000
Inventories, per valuation	
Lumber	31,000
Logs	193,000
Fuel Oil	2,000
Prepaid insurance	2,000
Timber cutting contracts - current portion - per appraisal	400,000
	<u>662,000</u>

Other Assets

Timber cutting contracts - long term portion - per appraisal	341,000
Organization expenses	31,000
	<u>372,000</u>

Property, Mill and Equipment - per appraisal

Buildings - new construction	147,000	
- existing buildings	46,000	193,000
Sawmill Equipment - new construction	1,557,700	
- existing equipment	566,300	2,124,500
Mobile and Highway equipment		238,000
Land and improvements		126,800
		<u>2,682,300</u>

Additional buildings and equipment over and above Pease appraisal  
 (note3)

82,603TOTAL ASSETS\$3,798,903

See attached notes and assumptions which are an integral part of this projected balance sheet.

LANDRETH TIMBER COMPANY, INC.  
PROJECTED BALANCE SHEET      NOVEMBER 17, 1977  
(UNAUDITED)      (AFTER CLOSING OF STOCK TRANSFER)

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities

Accounts payable, general	3,500
Accounts payable, equipment and buildings*	136,789
Organization expenses payable	25,000
Accrued expenses - wages (non capital item)	4,000
Accrued expenses - tax and withholding	7,000
Federal Income Tax payable on liquidation - payable approx. 2/1/78	46,614
Total Current Liabilities	<u>222,903</u>

Long-Term Loans

5-year bank term loan (not guaranteed, secured by all of assets of business), 2% over prime interest rate, one year moratorium on principal repayment)	1,900,000
Bank term loan (term to be decided, 1% over prime interest rate, secured by S.S. Dennis and J. Bolten joint and several limited guarantee, to be repaid pro-rata with above 5-year bank term loan)	1,000,000
Bank loan (secured by cash equivalent - S.S. Dennis and J. Bolten, 1/2% over prime, repayable after above two loans)	500,000
	<u>3,400,000</u>

Stockholders' Equity

Class A Common Stock, \$2.00 par value, 100,000 shares authorized, 35,000 shares issued	170,000
Class B non-voting stock, \$0.40 par value, 25,000 shares authorized, 15,000 shares issued	6,000
	<u>176,000</u>

TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY      \$3,708,993

\*(including 814,000 capitalized wages payable 11/16/77)

See attached notes and assumptions which are an integral part of this projected balance sheet.

LANDRETH TIMBER COMPANY, INC.  
 NOTES AND ASSUMPTIONS FOR PROJECTED  
 NOVEMBER 17, 1977 BALANCE SHEET  
 (UNAUDITED)

1. This balance sheet has been prepared on the assumption that the acquisition of the Landreth family's stock has been completed by B and D Company, and that there has been an immediate IRS Code Section 334 (b) (2) liquidation and then a change of name to Landreth Timber Company, Inc., a Delaware Corporation.
2. The assumptions used in my November 5, 1977 letter and unaudited cash flow projection to you, and in my September 15, 1977 unaudited cash flow projection to you apply to this balance sheet—note should be taken of the expected \$86,582 addition capital expenditure to be spent in November and December 1977 over and above the \$133,000 projected on 11/5/77. This was caused by \$30,950 extra costs over and above Mr. Landreth's 9/30/77 capital expenditure estimate and a misunderstanding regarding \$60,642 paid in October 1977 for capital expenditures.
3. Where there is a reference to "per appraisal" in the Balance Sheet, it refers to the appraisal figures submitted by Mr. Pease in his October 21, 1977 report.
4. Timber cutting contracts have been split into the current portion (which is expected to be amortized within the next 12 months based on earlier log usage assumptions), and into long term portion which is expected to be amortized after the first 12 months operations of the new Corporation.
5. No accumulated depreciation nor amortization has been shown against timber cutting contracts and property, mill and equipment as the new Corporation will



not have commenced operations until November 18, 1977.

6. As instructed by you, additional buildings and equipment cover items which have been omitted or undervalued on Mr. Pease's appraisal.
7. Mr. Landreth has provided the \$136,789 estimate of accounts payable, equipment and buildings.
8. Long-term loans and Stockholders' Equity. This information has been taken from your November 10, 1977 memo and from Mr. Neil Khosla (sic) of your law firm. Loan repayment schedules have not been finalized.
9. It is understood that there will be certain working capital ratio requirements, restrictions on dividends and other possible financial restrictions, which are not known at this point, to be imposed by the lending institutions.

## EXHIBIT I

### CONSULTING AND NONCOMPETITION AGREEMENT

Effective as of November 17, 1977, B&D Company, Inc. (the "Company"), a Delaware corporation, and Ivan K. Landreth (the "Consultant") agree as follows:

#### 1. *Consulting Arrangement.*

1.1. *Consulting Period.* The Company shall employ the Consultant as a consultant to the Company for a period of one (1) year commencing on the date of this Agreement (such period, as it may be extended, the "Consulting Period").

1.2. *Consulting Duties, etc.* The Company shall employ the Consultant (a) to participate in the operation of the timber mill owned by the Company in the first six (6) months of the Consulting Period, and (b) for such purposes as the Company reasonably deems appropriate in the second six (6) months of the Consulting Period; and the Consultant shall devote such time and effort and shall perform such services as are appropriate or necessary to the performance of his duties as a consultant to the Company in connection with such participation and for such purposes.

#### 2. *Compensation.*

2.1. *Compensation During Consulting Period.* The Company shall pay the Consultant monthly at the rate of Two Thousand Five Hundred Dollars (\$2,500) per month for the first six (6) months of the Consulting Period and at the rate of One Thousand Dollars (\$1,000) per month for the second six (6) months of the Consulting Period.

2.2. *Reimbursement of Costs and Expenses.* Consultant will be reimbursed for his reasonable costs and expenses in connection with the performance of services

specifically requested by the Company upon reasonable substantiation and approval by the Company of such costs and expenses.

3. *Noncompetition.* At all times during the Consulting Period and for a period of three (3) years after termination of the Consulting Period, the Consultant shall not, directly or indirectly, as an employee of any person or entity (whether or not engaged in business for profit), individual proprietor, partner, stockholder, director, officer, joint venturer, investor, lender or in any other capacity whatever, compete with the business of the Company or any subsidiary of the Company (each such subsidiary, a "Company Subsidiary"). As used in this Agreement, "compete", "competition" or any variation thereof, means engagement or participation of the Consultant in, or his furnishing aid or assistance in connection with, the design, manufacture, distribution, sale, marketing or rendering of products or services of the type and kind designed, manufactured, distributed, sold, marketed or rendered by the Company or any Company Subsidiary in the Consulting Period or in the one-year preceding the Consulting Period, including, but not limited to, those products or services the Company or any Company Subsidiary, as the case may be, was then in the process of developing or designing for manufacture, sale, marketing or rendering in the States of California, Idaho, Oregon, Washington and Wyoming.

4. *No Solicitation of Employees.* At all times during the Consulting Period and for a period of three (3) years after termination of the Consulting Period, the Consultant shall not, directly or indirectly, or by any act in concert with others, employ, attempt to employ, recruit or otherwise solicit or induce or influence to leave his employment any employee of the Company or any Company Subsidiary for any purpose. The restrictions described in this Section 4 are applicable in the States of California, Idaho, Oregon, Washington and Wyoming.

5. *No Disclosure of Information.* The Consultant shall not at any time divulge, use, furnish, disclose or make accessible to anyone other than the Company or a Company Subsidiary or their respective directors or officers any knowledge or information with respect to (a) confidential or secret processes, plans, formulas, data (including cost data), machinery, drawings, specifications, manufacturing procedures and techniques, methods, technology, know-how, programs, devices or material relating to the business, products (whether existing or under development), services or activities of the Company or any Company Subsidiary; (b) any confidential or secret engineering, research, development or other original work of the Company or any Company Subsidiary; (c) any other confidential or secret aspects of the business, products or activities of the Company or any Company Subsidiary; or (d) any customer usages and requirements or any customer lists of the Company or any Company Subsidiary. All records, materials and information obtained by the Consultant in the course of his employment by the Company shall be deemed confidential and shall remain the exclusive property of the Company. This provision shall not apply to any information which at any time comes into the public domain other than as a result of the violation of the terms of this Section 5 by the Consultant.

6. *Enforceability.* The Company and the Consultant recognize that any breach by the Consultant of any of his obligations under Sections 3 and 4 would result in irreparable injury and damage to the overall reputation of the Company and to its business and affairs. The Company and the Consultant therefore consider the restrictions contained in Sections 3 and 4 to be reasonable as to the covenants of, and the duties and restrictions imposed on, the Consultant therein, whether in terms of extent, time or geographic area. However, if any such covenants, duties or restrictions are found by any court having competent jurisdiction to be unreasonable because



they are (or any one of them is) too broad, then those covenants, duties or restrictions shall nevertheless remain effective, but shall be considered amended as to extent, time or geographic area (or any one of them, as the case may be) in whatever manner is considered reasonable by such court, and as so amended shall be enforced.

7. *Relief in Case of Breach.* The services to be rendered by the Consultant to the Company in the Consulting Period are unique and extraordinary, which gives them a value peculiar to the Company; and the Company cannot be reasonably or adequately compensated in damages for their loss. Accordingly, any breach by the Consultant of the terms of this Agreement, including, but not limited to, the terms of Sections 3 and 4, will cause the Company irreparable injury and damage. Therefore, the Company shall be entitled, in addition to all other remedies available to it, to injunctive and other available equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, without notice to the Consultant, for the purpose of enforcing this Agreement or any of its terms.

8. *Termination of Employment.* All employment of the Consultant by the Company under this Agreement shall terminate on the earliest to occur of the following dates:

- (a) Upon expiration of the Consulting Period.
- (b) Upon the death or disability of the Consultant. For purposes of this Agreement, the Consultant shall be deemed disabled if he has been unable to render the services required to be rendered by him in the Consulting Period for thirty (30) consecutive days.
- (c) At the election of the Company, upon thirty (30) days' prior written notice.

9. *Payments Upon Termination.* If all employment of the Consultant by the Company under this Agreement

is terminated, the Company shall pay the Consultant the compensation otherwise payable to him under Section 7 through the date of such termination.

10. *Miscellaneous.* This Agreement shall inure to the benefit of and be binding upon the Company and the Consultant and their respective successors, executors, administrators, heirs and permitted assigns; *provided* that the Consultant may not make any assignment of this Agreement or any interest therein, by operation of law or otherwise, without the prior written consent of the Company. This Agreement constitutes the entire agreement between the parties and may not be changed except by a writing duly executed and delivered by the Company and the Consultant in the same manner as this Agreement. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington. The Company and the Consultant may execute this Agreement in any number of counterparts, each of which is an original, but all of which shall constitute but one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart. This Agreement supersedes in all respects any prior agreement between the Company and the Consultant relating to any of the subject matter hereof.

B&D COMPANY, INC.

By \_\_\_\_\_  
SAMUEL S. DENNIS 3d  
Its President

\_\_\_\_\_  
IVAN K. LANDRETH



**EXHIBIT J**  
**TO THE AFFIDAVIT OF SAMUEL S. DENNIS 3D**

The Stock Purchase Agreement dated as of October 6, 1977 together with the exhibits to it is reproduced in full in this Joint Appendix at pages 206 to 263.

**EXHIBIT K**  
**TO THE AFFIDAVIT OF SAMUEL S. DENNIS 3D**

The Agreement Of, And Amendment To, Stock Purchase Agreement, effective November 16, 1977 together with Exhibit H to the Stock Purchase Agreement is reproduced in full in this Joint Appendix at 264 to 274.

**EXHIBIT L**  
**CERTIFICATE**

Ivan K. Landreth, Thomas E. Landreth and Ivan K. Landreth, Jr. (such three individuals, collectively, the "Sellers") and Landreth Timber Company, Inc., a Washington corporation, as they are parties to a Stock Purchase Agreement dated October 6, 1977, as amended on November 16, 1977, among them and Samuel S. Dennis, 3d (such Stock Purchase Agreement, as so amended, the "Stock Purchase Agreement"), hereby jointly and severally certify as follows:

- (1) All of the terms and conditions of the Stock Purchase Agreement to be complied with and performed by the Sellers or by the Company on or before the date of this Certificate have been complied with and performed in all material respects;
- (2) All of the representations and warranties made by the Sellers and by the Company to the Buyer in the Stock Purchase Agreement are true and correct in all material respects as of the date of this Certificate, with the same force and effect as though such representations and warranties had been made as of the date hereof; and
- (3) No adverse change has occurred from and after the date of the Stock Purchase Agreement to and including the date of this Certificate which would materially affect the business, property, financial condition or future prospects of the Company.

IN WITNESS WHEREOF, the Company and the Sellers have hereunto set their respective hands and seals as of this November —, 1977.

LANDRETH TIMBER COMPANY, INC.

By /s/ Ivan K. Landreth  
IVAN K. LANDRETH  
President

/s/ Ivan K. Landreth  
IVAN K. LANDRETH

/s/ Ivan K. Landreth  
IVAN K. LANDRETH  
as Attorney-in-Fact for  
Thomas E. Landreth and  
Ivan K. Landreth, Jr.

**EXHIBIT M**

**ENGST, PHELPS & YOUNG**  
 ATTORNEYS AT LAW  
 6 Fuller-Quigg Bldg.—AC 509/662-7193  
 Wenatchee, Washington 98801

November 17, 1977

B&D Company, Inc.  
 c/o Graham & Dunn  
 34th Floor, Rainier Bank Tower  
 1301 Fifth Avenue  
 Seattle, Washington 98101

Re: Stock Purchase Agreement Dated October 6, 1977,  
 As Amended on November 16, 1977

Gentlemen:

This opinion is rendered to you pursuant to Paragraph 5(c) of the Stock Purchase Agreement dated October 6, 1977, as amended on November 16, 1977 (the "Stock Purchase Agreement"), among B&D Company, Inc. (the "Buyer"), Landreth Timber Company, Inc. (the "Company"), Ivan K. Landreth, Ivan K. Landreth, Jr. and Thomas E. Landreth (such three last-named persons, collectively, the "Sellers").

I am of the following opinion:

1. The Company is duly incorporated under the laws of the State of Washington, has paid all taxes and license and filing fees due to said State and is a corporation in good standing in said State. The Company has all corporate power and authority necessary to own the properties now owned or purported to be owned by it, and to conduct its business as it is presently conducted.

2. The authorized capital stock of the Company consists of 1,000 shares of a single class of \$100 par value common stock ("Common Stock"). The total number of issued and outstanding shares of Common Stock is 500 shares, which shares are held beneficially and of record as follows:

<u>Name of Shareholder</u>	<u>Number of Shares Held Both Beneficially and of Record</u>
Ivan K. Landreth	380
Ivan K. Landreth, Jr.	60
Thomas E. Landreth	60
<b>TOTAL</b>	<b>500</b>

There are no shares of Common Stock reserved for issuance or committed to be issued to anyone for any purpose. There is no restriction whatever on the transfer of the issued and outstanding shares of Common Stock, whether imposed by the Articles of Incorporation or By-Laws of the Company, by any other agreement, document or instrument binding on the Company or the holders of such shares of Common Stock or by any other means.

3. All 500 of the issued and outstanding shares of Common Stock have been duly and validly issued and are fully paid and nonassessable.
4. There are no options, agreements, or commitments of any kind known to me relating to the Common Stock, except as contemplated by the Stock Purchase Agreement.
5. Upon the transfer of all 500 issued and outstanding shares of Common Stock and payment therefor in accordance with the terms of the Stock Purchase Agreement, the Buyer will have good and valid title to all of such shares of Common Stock free of any and all liens, encumbrances, claims or other limitations thereon, and the Buyer will be the "bona fide pur-



chaser" (as such term is defined in the Uniform Commercial Code) of such shares.

6. The Stock Purchase Agreement has been duly and validly executed and delivered by the Sellers and the Company, and is legally and validly binding upon each of them in accordance with its terms. Ivan K. Landreth, the father of Ivan K. Landreth, Jr. and Thomas E. Landreth (both of whom are of legal age and fully competent), has acted as the duly authorized attorney-in-fact for both his sons in connection with the execution and delivery of the Stock Purchase Agreement and the consummation of all transactions contemplated thereby.
7. The execution and delivery of the Stock Purchase Agreement, the transfer of all issued and outstanding shares of Common Stock to the Buyer, the consummation of all other transactions contemplated by the Stock Purchase Agreement in accordance with its terms, and the compliance with the provisions of the Stock Purchase Agreement on the part of the Company and the Sellers will not constitute a violation of any statute or any regulation or conflict with or result in a breach of or default under the Articles of Incorporation or By-Laws of the Company or any of the terms, conditions or provisions of any agreement, document or instrument known to me to which any of the Sellers or the Company is a party or by which any of them is bound.
8. To the best of my knowledge, there is no litigation, proceeding, claim or governmental investigation pending or threatened against, or relating to, the Company or its properties or business.

Very truly yours,

ENGST, PHELPS & YOUNG

/s/ Edward T. Engst  
 EDWARD T. ENGST  
 as Counsel for  
 Landreth Timber Company, Inc.,  
 Ivan K. Landreth,  
 Ivan K. Landreth, Jr., and  
 Thomas E. Landreth

ETE:bf

## EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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No. C78-663SR

LANDRETH TIMBER COMPANY, INC.  
*Plaintiff,*

vs.

IVAN K. LANDRETH, *et al.*,  
*Defendants.*

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Transcript of proceedings in the above-entitled and -numbered cause, before the Honorable Barbara J. Rothstein, United States District Court Judge, on February 27, 1981.

THE COURT: Counsel, let me say this: I am torn between wanting to give you a very carefully reasoned well-written-out decision which I think your briefs merit—I don't know what was before other courts when they ruled on this in terms of their reasoning, but this court certainly is not in a position of in any way pretending the issues don't exist and just making it sound as if the issue was clearly one way or the other, because counsel have clearly zeroed in on the ambiguities in Forman and have made them the central issue in this case.

I think it warrants a well-reasoned answer, but on the other hand I would like to move this along for you and give you an idea of where my thinking is at this point so we can get onto the next hearing.

One thing I would urge both counsel is the last word I would use in discussing the Forman case is "clearly" anything. If anything is clear, it is that word "clearly" does not apply. It is apparent to the court that either by design or just by omission the Forman court was not considering this type of case at the time the decision was rendered. It was dealing with a very peculiar situation. The stock there was clearly not what, by any characteristics, would qualify as commercial stock.

What this court has to decide and what the other courts before it presumably were faced with is the question of was Forman meant to be a kind of unique one-shot situation, or was Forman meant as a precursor and an indicator of what the Supreme Court was thinking in terms of more universally applicable laws in terms of dealing with situations involving the Securities Act.

There is no question that one interpretation of Forman would be to say that it only had to reach the issue before it and find that the characteristics of the stock before it did not qualify that stock as a security and that's all it was saying. But it seems to this court that that is too limited an interpretation to place on the Forman case, and that consequently, whether well reasoned or not, the leanings of the courts that have followed it, at least the circuit courts, have been to see Forman as a precursor of a tendency to look at the Securities Act and interpret what that Act was really meant to cover.

It is clear to this court that the initial intent of the Securities Act, if we go back that far and try to figure it out, was not to cover this type of a situation, that this situation was not the kind of transfer of securities with which the 1933, 1934 Acts were concerned.

And starting with that basic premise, I think this court sees that Forman intended to provide an analysis that would enable courts to more correctly apply the Securities Act in accord with the intent of Congress in designing those Acts.



At this time the court would see that Forman across the board in parts A and B intended to utilize an economic realities test, and while the court did not have to reach a full statement of that in part A of Forman, this case today rather clearly and squarely faces the problem. We can't get by by saying anything about the stock characteristics. There is no question in the court's mind that the characteristics of the stock in this case comply with the general corporate stock characteristics, all 11 of them that counsel have so clearly set out.

So I think you are right, it depends on how the court views Forman, and I do find that the reasoning in the seventh circuit case is persuasive. The courts have interpreted Forman as setting a certain trend and saying the federal courts have jurisdiction when the statute intended them to have jurisdiction. A case that could either have been a transfer of assets or of stock, a 100 percent stock transfer such as we have before us, was not intended to be covered by the Act, and I think Forman indicates that.

Just a word about the Ambrust case, counsel. Ambrust in no way sets precedent for this court. The issue was the question of whether a face to face stock sale transaction was covered by the Securities Act as distinct from an over-the-counter transaction. The court in Ambrust not only didn't have Forman before it, but didn't have this question briefed and argued before it squarely.

I think this clearly raises the control issue, and the briefs have set out, and both counsel agree, that there is a dispute or set of disputed facts. It clearly cannot go by summary judgment, and I think it requires an evidentiary hearing on the control issue, and I would like to set one up and I would like you to do some thinking about how much time you think you need.

Now, let me create some guidelines here. I don't think that the issue of control goes to who was in control of making the representations at the time of the sale. In other words, a lot of the allegations in the affidavits go

to the fact that Landreth clearly was in a position to tell everybody everything, because he was in a position of control and he had the books, the records, the accounting materials. That's not the control we are talking about. I don't want to get into that.

The allegations of fraud, as the court sees it, will be tried in state court. It will save time not to repeat them here.

The issue the court is concerned about is what was the intent of those people who bought that stock. Were they going to take over the running of this corporation? That doesn't mean they have to personally be running it, they could hire somebody to run it, or were they buying the stock with the intent that Mr. Landreth was going to stay on and run this corporation for them in some meaningful activity? I guess that's where the court is going to have to draw some conclusions.

I don't want the hearing to get out of hand into the actual allegations of fraud. With those guidelines, counsel, why don't you see what you are going to be putting on in terms of evidence and call Mr. Kimzey.

I know this matter has been pending a long time, and if you can get your evidence together, I wouldn't mind hearing it next week. I can't imagine this is going to take a great deal of preparation of witnesses. I don't anticipate it being a long hearing.

MR. EDWARDS: Your honor, we might even be able to handle it probably by way of allowing us to make an offer of proof, perhaps a written one, and the court could look at it and decide whether taking those things as true that was sufficient to solve the problem.

THE COURT: That would be an excellent way, counsel, if you can agree. It would almost be by way of stipulating certain facts.

MR. EDWARDS: I don't think they would agree to the facts that we would offer. I think the facts that we would offer would probably give the court the opportunity to exercise its judgment about whether it considers—



THE COURT: Okay.

MR. SMITH: Your honor, I would suggest that I think we can get together on a great number of the facts which bear on this issue that are not in dispute, and if we need a hearing at all, I think it can be quite limited.

THE COURT: I am going to leave it to counsel to notify the clerk as to what you think you need; bearing in mind that I can always ask you for a hearing if when I see the materials I think I need it. I would like to get this as quickly as possible. I don't know if you want to set a scheduling now for the submission of papers, or do you want to discuss it between yourselves or what?

MR. EDWARDS: I would rather we did not schedule. I am really bunched for about the next ten days. This is a matter of great importance and requires some time.

MR. SMITH: We can work it out.

THE COURT: Let me say this, the court is going to be out of town the last two weeks in March. So if you are not going to get me the materials in the next two weeks, don't feel a time pressure. I would certainly like to have them here by the time I return at the end of March. I think that would probably be a reasonable deadline for you to work against.

MR. EDWARDS: Your honor, I would also like to reserve the opportunity to argue the question as to whether the control always must take place after the sale, and our offer of proof will give the facts that I think are relevant in determining the control issue, and as we would point out in our argument, I think the pre-closing control is also critical, not control over representations, but control over developing a system or a machine or a mill that would produce a profit.

MR. SMITH: Your honor, I would just point out that I think that's exactly the concern that the court expressed, because that gets us into the representations, the pre-sale closing activity. If the court deems that relevant, we will certainly present evidence on that.

THE COURT: I can see how that might be relevant in one regard and that is if the allegations are that it was represented that there would be control, the purchase was made relying on that, and then the control didn't actually come through, I could see that situation as being a relevant one in terms of the incentive of the motive behind the purchase. Is that what you meant, Mr. Edwards?

MR. EDWARDS: No, I don't, your honor. Maybe the best thing to do is schedule a time to argue that question, which we have not argued, because I think under Howey and the other cases that control doesn't have to be after the sale, and I would like the opportunity to argue that.

THE COURT: Why don't you try to get the facts together. Let's see what the facts are and I certainly will allow you the time to argue that, but it might be easier for me to understand your argument if I know exactly the factual context you're urging.

I want to thank counsel for the argument and the briefs. They really zeroed in on the question and were extremely helpful to the court. Thank you very much.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Civil Action No. C78-663R

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

vs.

IVAN K. LANDRETH and LUCILLE LANDRETH, *et al.*,  
*Defendants.*

IVAN K. LANDRETH and LUCILLE LANDRETH,  
husband and wife, *et al.*,  
*Counterclaim Plaintiffs,*

vs.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim Defendants.*

[Filed Mar. 26, 1981]

**DEFENDANTS' REQUESTS TO PLAINTIFF FOR  
ADMISSIONS OF FACT CONCERNING  
POST-CLOSING CORPORATE CONTROL**

TO: Landreth Timber Company, Inc., and its attorney,  
John W. Hathaway, EDWARDS & BARBIERI

Pursuant to Court order and Rule 36 of the Federal  
Rules of Civil Procedure, you are hereby requested to  
admit to or specifically deny the truth of the matters set

forth below on or before March 25, 1981. You are re-  
minded that FRCP 36 requires that "[a] denial shall  
fairly meet the substance of the requested admission,  
and when good faith requires that a party qualify his  
answer or deny only a part of the matter of which an  
admission is requested, he shall specify so much of it  
as is true and qualify or deny the remainder.

**DEFINITIONS**

1. The term "plaintiff" refers to plaintiff/counter-  
claim defendant Landreth Timber Company, Inc.

2. The term "defendants" refers to defendants/  
counterclaim plaintiffs Ivan K. Landreth and Lucille  
Landreth, husband and wife; Thomas E. Landreth; and  
Ivan K. Landreth, Jr. and Kathleen Landreth. Unless  
otherwise indicated, the same "Landreth" or "Ivan Land-  
reth" refers to Ivan K. Landreth.

3. The term "Dennis" refers to Samuel S. Dennis III  
of Newton, Massachusetts, buyer under the Stock Pur-  
chase Agreement dated October 6, 1977.

4. The term "closing" refers to November 17, 1977,  
the date on which the sale of Landreth Timber Company,  
Inc. by defendants to B & D Company, Inc., plaintiff's  
predecessor in interest, was consummated.

**REQUESTS FOR ADMISSIONS**

1. Attached hereto are true, correct, and authentic  
copies of the following documents:

(a) Executed Stock Purchase Agreement dated Octo-  
ber 6, 1977.

(b) Executed Assignment Of, And Amendment To,  
Stock Purchase Agreement dated November 16, 1977.

(c) Executed Articles of Merger of Landreth Timber  
Company, Inc. into B & D Company, Inc. dated Novem-  
ber 17, 1977.

(d) Executed Agreement And Plan of Merger of Landreth Timber Company, Inc. into B & D Company, Inc. dated November 17, 1977.

(e) Executed Resignation of Officers of Landreth Timber Company, Inc. dated November 17, 1977.

(f) Executed Resignation of Directors of Landreth Timber Company, Inc. dated November 17, 1977.

(g) Document numbers 11001969 through 11002041, consisting of stock certificates and related assignments having as their cumulative effect the vesting of ownership of Landreth Timber Company, Inc. stock after November 17, 1977, in Dennis, Lillian W. Dennis, John Bolten, Sr., John Bolten, Jr., Katherine S. Bolten, Jack P. Branch, Robert E. Branch, Al Willard, Isabel Willard, Troy Beaver, Sr., and Troy Beaver, Jr.

(h) Action of Sole Director (Dennis) dated November, 1977 (Document numbers 11002296-97).

(i) Letter from Jack P. Branch to Dennis dated October 20, 1977 with resume attachments (Document numbers 11003155-61; Deposition Exhibit 31).

(j) Letter from Jack Branch to Ivan Landreth dated October 27, 1977 (Document number 41000053-54; Deposition Exhibit 115).

(k) Letter from Jack Branch to Phil Cook dated December 19, 1977 (Document number 11003314; Deposition Exhibit 294).

(l) Certificate of President signed by Dennis and dated November 17, 1977 (Document number 11002330).

(m) Letter from Dennis to Supervisor, Colville National Forest, dated November 17, 1977 (Document number 11002331).

(n) Letter from Jack Strother to Ivan Landreth dated March 3, 1978 (Document number 61000067).

(o) Letter from Ivan Landreth to Jack Strother dated January 16, 1978 (Document number 61000219-21).

(p) Executed Consulting and Noncompetition Agreement effective November 17 (Document numbers 11002177-180).

(q) Letter from Jack Branch to Ivan Landreth dated January 10, 1978 (Deposition Exhibit 298).

(r) Letter from Jack Branch to Dennis and John Bolten dated November 21, 1977 (Document numbers 11003242-43; Deposition Exhibit 285).

(s) Letter from Jack Branch to Dennis and John Bolten dated November 28, 1977 (Document numbers 11003244-45; Deposition Exhibit 286).

(t) Letter from Jack Strother to Phil Cook dated December 1, 1977 (Document number 11004196).

(u) Letter from Dennis to Jack Branch dated December 1, 1977 (Document number 11003257; Deposition Exhibit 287).

(v) Letter from Jack Branch to Dennis and John Bolten dated December 6, 1977 (Document numbers 11003269-71; Deposition Exhibit 288).

(w) Letter from Dennis to Phil Cook dated December 7, 1977 (Document number 11003277; Deposition Exhibit 290).

(x) Letter from Dennis to Phil Cook dated December 7, 1977 (Document numbers 11003274-76; Deposition Exhibit 291).

(y) Letter from Jack Branch to Dennis dated December 12, 1977 (Document numbers 11003282-85; Deposition Exhibit 292).

(z) Letter from Dennis to Phil Cook dated December 13, 1977 (Document number 11003287).



(aa) Letter from Dennis to John Bolten dated December 16, 1977 (Document number 11003296).

(bb) Letter from Jack Branch to Dennis dated December 19, 1977 (Document numbers 11003302-05; Deposition Exhibit 296).

*RESPONSE:*

Admit.

2. As of October 5, 1977, one hundred percent (100%) of the outstanding stock of Landreth Timber Company, Inc. was owned by defendants Ivan K. Landreth, Ivan K. Landreth, Jr., and Thomas E. Landreth.

*RESPONSE:*

Admit.

3. As of October 5, 1977, the most valuable physical asset of Landreth Timber Company, Inc. was a lumber manufacturing facility under reconstruction in Tonasket, Washington.

*RESPONSE:*

Admit.

4. Under the terms of a Stock Purchase Agreement dated October 6, 1977, Ivan K. Landreth, Ivan K. Landreth, Jr., and Thomas E. Landreth, as sellers, agreed to sell one hundred (100%) of the outstanding stock in Landreth Timber Company, Inc. to Samuel S. Dennis III ("Dennis") as buyer.

*RESPONSE:* Deny insofar as request assumes parties contemplated that Dennis executed stock purchase agreement in individual capacity. Admit that, under the terms of the stock purchase agreement, defendants agreed to sell 100% of the outstanding (continued on attached sheet)

5. Closing of the Stock Purchase Agreement occurred on November 17, 1977.

*RESPONSE:*

Admit.

6. Under the terms of an Assignment of, And Amendment To, Stock Purchase Agreement dated November 16, 1977, Dennis assigned his interest in Landreth Timber Company, Inc. to B & D Company, Inc.

*RESPONSE:*

(see answer on attached sheet)

7. B & D Company, Inc. is a Delaware corporation which was formed pursuant to the direction of Dennis, or his business partners or agents.

*RESPONSE:*

(see answer on attached sheet)

8. Under the terms of an Agreement and Plan of Merger dated November 17, 1977, Landreth Timber Company, Inc. was merged into B & D Company, Inc.

*RESPONSE:*

Admit.

9. The merger of Landreth Timber Company, Inc. into B & D Company, Inc. was effected pursuant to the direction of Dennis, or his business partners or agents.

*RESPONSE:*

(see answer on attached sheet)

10. Upon consummation of the merger of Landreth Timber Company, Inc. into B & D Company, Inc., plaintiff thereafter continued to conduct the sawmill business as Landreth Timber Company, Inc.

*RESPONSE:*

Admit.

11. None of the defendants were officers, directors, shareholders, or employees of B & D Company, Inc.; nor did said defendants have any financial interest of any kind in B & D Company, Inc.

*RESPONSE:*

Admit.

12. Prior to closing, the officers of Landreth Timber Company, Inc. consisted of Ivan K. Landreth as President, and Lucille Landreth as Vice-President and Secretary-Treasurer.

*RESPONSE:*

Admit.

13. Prior to closing, the entire Board of Directors of Landreth Timber Company, Inc. consisted of Ivan K. Landreth, Lucille Landreth, and Thomas E. Landreth.

*RESPONSE:*

Admit.

14. Paragraph 4(b)(3) of the Stock Purchase Agreement required the sellers of Landreth Timber Company to deliver to buyer at closing the signed resignations of all officers and directors of the company.

*RESPONSE:*

Admit.

15. At closing on November 17, 1977, Ivan K. Landreth executed a written resignation as president of Landreth Timber Company, and Lucille Landreth executed a written resignation as vice-president and treasurer of the company.

*RESPONSE:*

Admit.

16. At closing on November 17, 1977, Ivan K. Landreth, Lucille Landreth, and Thomas E. Landreth resigned as directors of Landreth Timber Company.

*RESPONSE:*

Admit.

17. Prior to November 17, 1977, Dennis assembled a group of individuals to hold stock in Landreth Timber Company after closing of the sale; none of the defendants were included in this group.

*RESPONSE:* Deny that Dennis assembled the purchasing group. Admit that defendants purchased no shares in B & D Company, Inc. or in the successor Landreth Timber Co., Inc.

18. After closing on November 17, 1977, two classes of Landreth Timber Company stock existed. Class A stock was owned by Dennis, Lillian W. Dennis, John Bolten, Sr., John Bolten, Jr., and Katherine S. Bolten. Class B stock was owned by Jack P. Branch, Robert E. Branch, Al Willard, Isabel Willard, Troy Beaver, Sr., and Troy Beaver, Jr.

*RESPONSE:*

Admit.

19. After closing, none of the defendants were officers, directors, or shareholders in Landreth Timber Company.

*RESPONSE:*

Admit.

20. After closing, none of the defendants retained any ownership interest in Landreth Timber Company.

**RESPONSE:** Admit that defendants had no stock ownership interest in Landreth Timber Company after closing.

21. After closing, none of the defendants had any right to share in profits or losses of Landreth Timber Company.

**RESPONSE:**

(see answer on attached sheet)

22. After closing, none of the defendants, other than Ivan Landreth, had any employment relationship with Landreth Timber Company or were involved in any respect with the operation of the company.

**RESPONSE:**

Admit.

23. Immediately after closing, the board of directors of Landreth Timber Company consisted of Dennis and John Bolten, Sr.

**RESPONSE:**

Admit.

24. Immediately after closing, the officers of Landreth Timber Company consisted of John Bolten, Sr., chairman of the board; Dennis, president and treasurer; Jack G. Strother, secretary; and Ruth A. Weymouth, assistant secretary.

**RESPONSE:**

Admit.

25. Prior to closing, Jack Branch began searching for a General Manager to replace Ivan Landreth after closing.

**RESPONSE:** Admit that Jack Branch began searching for a general manager prior to closing. Deny that the general manager was to replace Ivan Landreth.

26. Jack Branch was acting on behalf of Dennis in attempting to locate a General Manager.

**RESPONSE:** Deny that Jack Branch was acting on behalf of Dennis in attempting to locate a general manager. Admit that Jack Branch acted on behalf of purchasers.

27. By letter dated October 20, 1977, Jack Branch advised Dennis that his search for a new General Manager had narrowed to three candidates, one of which was Phil Cook.

**RESPONSE:**

Admit.

28. Between October 20, 1977 and closing on November 17, 1977, Dennis' purchasing group selected and retained Phil Cook to be General Manager of Landreth Timber Company after closing.

**RESPONSE:**

Admit.

29. Prior to closing, Landreth provided the purchasers with the name of an individual he recommended as a possible general manager. This individual was not Phil Cook.

**RESPONSE:**

(see answer on attached sheet)

30. Ivan Landreth did not in fact participate in the decision to hire Phil Cook as General Manager.



**RESPONSE:**

(see answer on attached sheet)

31. By letter dated October 27, 1977, Jack Branch informed Ivan Landreth that Phil Cook had been hired to be the new General Manager after closing, and requested that Landreth extend "all courtesies to Phil in any interim meetings that you will have with him prior to our formal take over" after closing.

**RESPONSE:**

Admit.

32. After closing, Phil Cook immediately assumed the position of General Manager of Landreth Timber Company operations.

**RESPONSE:**

Admit.

33. Ivan Landreth's role with Landreth Timber Company after closing was as a consultant pursuant to the terms of a Consulting and Non-Competition Agreement dated November 17, 1977.

**RESPONSE:**

Admit.

34. Ivan Landreth had no job title with Landreth Timber Company after closing.

**RESPONSE:**

Deny.

35. The nature and scope of Ivan Landreth's post-closing role as consultant were defined by paragraph 1.2 of the Consulting Agreement, to wit:

1.2. *Consulting Duties, etc.* The Company shall employ the Consultant (a) to participate in the operation of the timber mill owned by the Company in the first six (6) months of the Consulting Period, and (b) for such purposes as the Company reasonably deems appropriate in the second six (6) months of the Consulting Period; and the Consultant shall devote such time and effort and shall perform such services as are appropriate or necessary to the performance of his duties as a consultant to the Company in connection with such participation and for such purposes.

**RESPONSE:**

Admit.

36. Ivan Landreth's compensation as a consultant was on a fixed monthly salary plus expenses with no profit sharing, commissions, or other components.

**RESPONSE:**

Admit.

37. Paragraph 2.2 of the Consulting Agreement defined the circumstances under which Landreth Timber Company would reimburse Ivan Landreth for expenses incurred by him in his role as a consultant, to wit:

2.2 *Reimbursement of Costs and Expenses.* Consultant will be reimbursed for his reasonable costs and expenses in connection with the performance of services specifically requested by the Company upon reasonable substantiation and approval by the Company of such costs and expenses.

**RESPONSE:**

Admit.

38. Paragraph 8(c) of the Consulting Agreement provided that Ivan Landreth's post-closing employment was terminable by plaintiff at will upon thirty days prior written notice.

*RESPONSE:*

Admit.

39. After closing, Jack Branch monitored construction progress and operations at the mill, and reported periodically to Dennis and Bolten concerning the same.

*RESPONSE:*

(see answer on attached sheet)

40. By letter dated November 21, 1977, Jack Branch reported to Dennis and Bolten concerning certain events related to "the transition" during the first several days after closing, stating among other things:

"[I]t was very gratifying to see a take-charge guy like Phil Cook showing his real leadership capabilities and literally snapping them [the employees] to and starting to run the show like a real business. I do feel you can be proud of Phil Cook and his business-like manner and overall leadership."

*RESPONSE:*

(see answer on attached sheet)

41. Two days after closing, Phil Cook excluded Ivan Landreth from a meeting with representatives of Warren & Brewster, the maxi-mill supplier.

*RESPONSE:*

Deny.

42. After closing, Landreth Timber Company and Phil Cook possessed the authority to hire or fire employees without the permission or concurrence of Ivan Landreth.

*RESPONSE:*

Admit.

43. After closing, Ivan Landreth did not possess the authority to hire or fire employees without the permission or concurrence of Landreth Timber Company or Phil Cook.

*RESPONSE:*

Admit.

44. After closing, Ivan Landreth did not in fact hire or fire any Landreth Timber Company employees.

*RESPONSE:*

Admit.

45. After closing, Landreth Timber Company possessed the authority to set or change employee salary levels without the permission or concurrence of Ivan Landreth.

*RESPONSE:*

Admit.

46. After closing, Ivan Landreth did not possess the authority to set or change employee salary levels without the permission or concurrence of Landreth Timber Company or Phil Cook.

*RESPONSE:*

Admit.

47. After closing, Ivan Landreth did not in fact set or change any salary levels for Landreth Timber Company employees.

**RESPONSE:**

Admit.

48. After closing, Phil Cook possessed the authority to enter into new timber purchase contracts without the permission or concurrence of Ivan Landreth.

**RESPONSE:**

Admit.

49. After closing, Ivan Landreth did not possess the authority to enter into new timber purchase contracts without the permission or concurrence of Landreth Timber Company or Phil Cook.

**RESPONSE:**

Admit.

50. After closing, Ivan Landreth did not in fact enter into any new timber purchase contracts on behalf of Landreth Timber Company.

**RESPONSE:** Admit that defendant Landreth signed no such contracts. Deny that defendant Landreth did not participate in bidding on, and acquiring, such contracts on behalf of plaintiff.

51. Prior to closing, Landreth Timber Company purchased timber from the United States Forest Service.

**RESPONSE:**

Admit.

52. Paragraph 2(j) of the Stock Purchase Agreement stated that Landreth Timber Company had in the past purchased "most" of its timber requirements from the Forest Service.

**RESPONSE:**

Admit.

53. By letter dated November 17, 1977, Dennis informed the Forest Service that Landreth Timber Company had been sold to a new purchasing group, that Dennis was the controlling stockholder and that Phil Cook was "the new General Manager of all operations at Landreth Timber Company."

**RESPONSE:**

Admit.

54. By an instrument entitled "Certificate of President" dated November 17, 1977, Dennis attested that the following resolution was adopted by all of the new directors of Landreth Timber Company:

**RESOLVED:** That Phillip A. Cook, as General Manager of the Company's operations, is hereby designated and authorized as the Company's representative to deal with the United States Forest Service and to execute all documents in connection with timber cutting contracts and any and all matters between Forest Service and the Company.

**RESPONSE:**

Admit.

55. After closing, Landreth Timber Company and Phil Cook possessed the authority to make decisions for Landreth Timber Company concerning product mix, product sales, and sale terms without the permission or concurrence of Ivan Landreth.



*RESPONSE:*

(see answer on attached sheet)

56. After closing, Ivan Landreth did not possess the authority to make decisions for Landreth Timber Company concerning product mix, product sale prices, or sale terms without the permission or concurrence of Landreth Timber Company or Phil Cook.

*RESPONSE:*

Admit.

57. After closing, Ivan Landreth did not in fact make or implement any decisions for Landreth Timber Company concerning product mix, product sale prices, or sale terms on behalf of Landreth Timber Company.

*RESPONSE:*

Deny.

58. After closing, Landreth Timber Company and Phil Cook possessed the authority to make decisions concerning expenditures for equipment acquisitions and maintenance without the permission or concurrence of Ivan Landreth.

*RESPONSE:* Deny that Cook was not required to confer with defendant Landreth concerning expenditures for equipment acquisitions and maintenance. Admit that, after conferring with defendant Landreth, Cook was authorized to make these decisions on behalf of plaintiff.

59. After closing, Ivan Landreth did not possess the authority to make decisions for Landreth Timber Company concerning expenditures for equipment acquisitions and maintenance without the permission or authority of Landreth Timber Company or Phil Cook.

*RESPONSE:*

Admit.

60. After closing, Ivan Landreth did not in fact make or implement any decisions for Landreth Timber Company concerning expenditures for equipment acquisitions or maintenance.

*RESPONSE:*

Deny.

61. After closing, Landreth Timber Company and Phil Cook possessed the authority to make decisions concerning construction, design, or redesign of the sawmill without the permission or concurrence of Ivan Landreth.

*RESPONSE:* Deny that Cook was not required to confer with defendant Landreth concerning construction and design of the facility. Admit that, after conferring with defendant Landreth, Cook was authorized to make these decisions on behalf of the plaintiff.

62. After closing, Ivan Landreth did not possess the authority to make decisions for Landreth Timber Company concerning construction, design, or redesign of the sawmill without the permission or concurrence of Landreth Timber Company or Phil Cook.

*RESPONSE:*

Admit.

63. After closing, Ivan Landreth did not in fact make or implement any decisions for Landreth Timber Company concerning construction, design, or redesign of the sawmill.

*RESPONSE:*

Deny.

64. By letter dated December 7, 1977 (Deposition Exhibit 290) Dennis communicated with Phil Cook concerning product mix policy and the potential advisability of purchasing a new kiln.

**RESPONSE:**

Admit.

65. Dennis sent copies of the letter which is Deposition Exhibit 290 to John Bolten, Jack Branch, Peter Townsend, Thomas Wood, and Frederick Fritz, but not to Ivan Landreth.

**RESPONSE:**

Admit.

66. By a second letter dated December 7, 1977 (Deposition Exhibit 291) Dennis communicated with Phil Cook concerning product pricing policy.

**RESPONSE:**

Admit.

67. Dennis sent copies of the letter which is Deposition Exhibit 291 to John Bolten, Jack Branch, Peter Townsend, Thomas Wood, and Frederick Fritz, but not to Ivan Landreth.

**RESPONSE:**

Admit.

68. By letter dated December 19, 1977 (Deposition Exhibit 294), Jack Branch advised Phil Cook of Ivan Landreth's post-closing role at the mill, stating, among other things:

"Ivan Landreth and his sons have sold 100% of the stock of Landreth Timber Company to B & D Corporation which subsequently will change its name

back to Landreth Timber Company. Ivan Landreth has no stock whatsoever in the company and has been retained on an interim basis for perhaps one to three months as a consultant on matters relating to the orderly transition in sales, contracts, customers, etc. In the event any of your personnel have any vague notions or concerns as to whether Ivan is still involved in the company, please be sure that he is not and although he is still around the mill, more or less tying upon his affairs, we will have no further use for his services in a short period of time. . . . Should you have the need to show this letter to any interested party, please feel free to do so."

**RESPONSE:**

(see answer on attached sheet)

69. Jack Branch sent copies of the letter which is Deposition Exhibit 294 to Sam Dennis and John Bolten.

**RESPONSE:**

Admit.

70. Neither Sam Dennis nor John Bolten ever advised Ivan Landreth, Jack Branch, or Phil Cook that the characterization in Deposition Exhibit 294 of Ivan Landreth's role was inaccurate in any respect.

**RESPONSE:**

Deny.

71. Subsequent to closing, Ivan Landreth received no instructions from Dennis concerning Ivan Landreth's role as a consultant.

**RESPONSE:**

Deny.

72. After closing, Ivan Landreth was not allowed to sign checks on behalf of Landreth Timber Company.

**RESPONSE:**

Admit.

73. After closing, Ivan Landreth was not allowed the use of Landreth Timber Company credit cards.

**RESPONSE:** Admit that defendant Landreth was not allowed the personal use of Landreth Timber Company credit cards. Admit that pursuant to consulting agreement, defendant Landreth was entitled to reimbursement for expenses.

74. After closing, Ivan Landreth's preclosing plans for construction of a timber kickout next to the Helle mill were not completed.

**RESPONSE:** Admit that plaintiff did not complete construction of a timber kickout next to the Helle mill, but deny that plaintiff did not intend to complete construction of the timber kickout.

75. After closing, Ivan Landreth's plans to build up slide guides on the mill's Nicholson 43-inch debarker were not completed.

**RESPONSE:** Admit that the Nicholson 43-inch debarker was completely replaced and building up slide guides on it was therefore not necessary.

76. After closing, Ivan Landreth's plan to install an automatic centering device on the 43-inch Nicholson debarker was not completed.

**RESPONSE:** Admit that the Nicholson 43-inch debarker was completely replaced and installing a centering device was therefore unnecessary.

77. After closing, Ivan Landreth's plan to install a swing-cutoff saw on line in front of the 43-inch Nicholson debarker was not completed.

**RESPONSE:** Admit that the Nicholson 43-inch debarker was completely replaced and that installing a swing-cutoff saw on line in front of it was therefore unnecessary.

78. After closing, Ivan Landreth's plan to install a larger hydraulic tank on the Nicholson 43-inch debarker was not completed.

**RESPONSE:** Admit that the Nicholson 43-inch debarker was completely replaced and that installing a larger hydraulic tank on it was therefore unnecessary.

79. After closing, Ivan Landreth's plan to replace U-shaped Helle-mill wheels and rails with V-shaped wheels and rails was not completed.

**RESPONSE:** Admit that replacement of the U-shaped Helle mill wheels and rails was not completed, but deny that plaintiff did not intend to replace them with V-shaped wheels and rails.

80. After closing, Ivan Landreth's plan to install a conveyor to return boards from the resaw to the edger was not completed.

**RESPONSE:** Admit that the conveyor return from the resaw to the edge was not completed, but deny that plaintiff did not intend to complete it.

81. After closing, plaintiff and/or Phil Cook decided to remove the Filer & Stowell edger which was on site at the time of closing.

**RESPONSE:**

Admit.

82. Ivan Landreth was not asked by plaintiff or Phil Cook to approve or disapprove of the decision to remove the Filer & Stowell edger.



**RESPONSE:**

Deny.

83. After closing, plaintiff and/or Phil Cook decided to replace the Filer & Stowell edger with a used Klamath Ward Mark 50 edger.

**RESPONSE:**

Admit.

84. Ivan Landreth was not asked by plaintiff or Phil Cook to approve or disapprove of the decision to purchase the Klamath Ward Mark 50 edger.

**RESPONSE:**

Deny.

85. On December 28, 1977, Phil Cook purchased a 26 inch debarker for installation at the mill.

**RESPONSE:**

Admit.

86. Ivan Landreth was not asked by plaintiff or Phil Cook to approve or disapprove of the decision to purchase the second debarker.

**RESPONSE:**

Deny.

87. Ivan Landreth was entirely absent from the mill from December 27, 1977 to January 10, 1978.

**RESPONSE:** Plaintiff does not know the exact dates that defendant Landreth was absent from the facility. Plaintiff admits that defendant Landreth was absent from the facility for approximately fifteen to twenty days in late December 1977 and early January 1978.

88. After closing, Ivan Landreth did not retain control over the essential managerial efforts and decisions upon which the failure or success of Landreth Timber Company rested.

**RESPONSE:**

Deny.

89. After closing, control over the essential managerial efforts and decisions affecting the failure or success of the Landreth Timber Company rested with the new officers, directors, shareholders, and General Manager of the company.

**RESPONSE:**

Deny.

90. By letter dated January 10, 1978 Jack Branch notified Ivan Landreth that his employment as a consultant was being terminated.

**RESPONSE:**

Admit.

91. After termination, Ivan Landreth received no compensation of any kind, other than wages up to the date of termination and 30 days severance pay, from Landreth Timber Company.

**RESPONSE:**

Admit.

92. Subsequent to January 10, 1978, Ivan Landreth did not participate in any way in the management or operation of Landreth Timber Company.

**RESPONSE:**

Admit.

93. Between November 17, 1977, and January 10, 1978, Ivan Landreth had no communications with Dennis in any way relating to the management, operation or control of Landreth Timber Company.

**RESPONSE:**

Deny.

94. Between November 17, 1977 and January 10, 1978, Ivan Landreth had no communications with Jack P. Branch in any way relating to the management, operation or control of Landreth Timber Company.

**RESPONSE:**

Deny.

95. Between November 17, 1977, and January 10, 1978, Ivan Landreth had no communications with any officer or director of Landreth Timber Company.

**RESPONSE:**

Deny.

Dated this 20th day of March, 1981.

BOGLE & GATES

/s/ Richard D. Vogt  
JAMES A. SMITH, JR.  
GUY P. MICHELSON  
PATRICIA H. CHAR  
RICHARD D. VOGT  
Attorneys for Defendants

Responses to the foregoing Requests for Admissions of Fact submitted this 26th day of March, 1981.

EDWARDS & BARBIERI

/s/ John W. Hathaway  
MALCOLM EDWARDS  
JOHN W. HATHAWAY  
Attorneys for Plaintiff

CONTINUATION OF ANSWERS TO  
REQUESTS FOR ADMISSIONS

4. stock in Landreth Timber Company to a corporation to be formed by purchasers and that Dennis executed the stock purchase agreement as an accommodation buyer on behalf of the corporation to be formed.
6. Admit that B & D Company was substituted for Dennis as buyer under the stock purchase agreement as stated in paragraph 2 of the Assignment of, and Amendment to, stock purchase agreement and as contemplated by paragraph 3 of the stock purchase agreement.
7. Deny that Dennis was solely responsible for formation of B & D Company. Admit that B & D Company was a corporation formed by the purchasing group, solely for federal tax reasons, to purchase defendant's stock.
9. Deny that the merger of Landreth Timber Company into B & D Company was effected solely at Dennis' direction. Admit that the merger of Landreth Timber Company, Inc. and B & D Company was effected for the benefit of all shareholders of B & D Company in order to establish purchaser's property tax basis in assets of Landreth Timber Company.
21. Admit that, after closing, defendants had no stock right that would have entitled them to dividends or any share in the profits or losses of the corporation. Deny that defendants had no interest in, or obligations concerning, the profits and losses of the Landreth Timber Company.
29. Admit that defendant Landreth provided Jack Branch with the name of a person to be considered for the general manager position. Admit that this person was not Phil Cook. Deny that defendant Landreth recommended that purchasers hire this person.

30. Admit that purchasers, not Ivan Landreth, decided to retain Phil Cook as general manager and that Ivan Landreth was not part of this decision. Deny that defendant Landreth was not asked to participate and cooperate in the search for a general manager and deny that defendant Landreth did not participate in this search.
39. Deny that Branch had any duty or function as a corporate officer to oversee construction progress and operations at the mill. Admit that Branch did visit the mill periodically after closing and that he did communicate his observations to Dennis and Bolten.
40. Deny that Branch had any official corporate oversight function. Admit that Branch's November 21, 1977 letter contained the quote stated. From information known or readily available to plaintiff, plaintiff cannot admit or deny the veracity of the quote.
55. Deny that Cook was not required to confer with defendant Landreth concerning decisions on product mix, product sales, and sale terms. Admit that, after conferring with defendant Landreth, Cook was authorized to make these decisions on behalf of plaintiff.
68. Admit that Branch made these statements in the December 19, 1977 letter to Phil Cook. Deny that these statements constituted advice to Cook concerning defendant Landreth's post-closing role at the mill and deny that these statements accurately describe defendant Landreth's post-closing role at the mill.



### STOCK PURCHASE AGREEMENT

This is an Agreement between IVAN K. LANDRETH of Oroville, Washington, THOMAS E. LANDRETH of Irvine, California, and IVAN K. LANDRETH, JR., of Oroville, Washington ("Sellers"); LANDRETH TIMBER COMPANY, INC., a Washington corporation with its principal office in Tonasket, Washington (the "Company"), and SAMUEL S. DENNIS 3d of Newton, Massachusetts ("Buyer").

WHEREAS, Sellers own five hundred (500) shares of common stock of the Company, being all of the issued and outstanding stock of any class of the Company, and

WHEREAS, Sellers desire to sell and Buyer desires to buy said shares subject to the terms, conditions and provisions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

1. Sellers agree to sell and Buyer agrees to buy said shares for a total price of Three Million Four Hundred Thousand Dollars (\$3,400,000), payable as follows:

(a) One Hundred Sixty-Five Thousand Dollars (\$165,000) in cash upon the execution and delivery of fully-executed copies of the agreement to the respective parties. Said down-payment shall be held in escrow by Rainier National Bank, Seattle, Washington (the "Bank") and, subject to the provisions of Paragraph 4 hereinafter, delivered to Sellers at the Closing; provided, that upon the request of Ivan K. Landreth, the Bank shall advance to the Company such amounts from said escrow cash as Mr. Landreth requests for use in conducting the business until the Closing. Said amounts shall constitute a non-interest bearing, unsecured demand loan to the Company from Buyer and shall not reduce the obligation of Buyer to pay the full purchase price not later than February 10, 1978, as hereinafter provided; and

(b) Seven Hundred Fifty Thousand Dollars (\$750,000) cash (including the balance of the \$165,000 deposit pro-

vided in Paragraph 1(a)) to be paid at Closing as provided in Paragraph 4. A note secured by a first mortgage on certain assets of the Company payable to the Small Business Administration amounting to \$253,095 on August 31, 1977 and notes payable to banks secured by a second mortgage on certain property of the Company or by personal collateral of Ivan K. Landreth in the total principal amount of One Hundred Fifty Thousand Dollars (\$150,000) shall be caused to be paid by Buyer at the Closing. An irrevocable written commitment of The First National Bank of Boston and/or Rainier National Bank to pay the cash balance due Sellers on February 10, 1978 shall be delivered to Sellers at the Closing. Said commitment shall be subject to the provisions of this Agreement and in a form satisfactory to counsel for said banks and counsel for Sellers.

(c) Sellers shall at the Closing deliver the shares of the Company to be sold under this Agreement to Buyer, properly endorsed for transfer with signatures guaranteed.

(d) The balance of the total purchase price of Three Million Four Hundred Thousand Dollars (\$3,400,000) in the amount of Two Million Six Hundred Fifty Thousand Dollars (\$2,650,000) shall be paid as follows: One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) in cash on February 10, 1978 without interest and a note or notes of the Substituted Buyer delivered to Sellers on Closing totaling Nine Hundred Thousand Dollars (\$900,000), payable on or before December 31, 1979. Principal payments on said note shall be at the rate of Thirty Dollars (\$30) per 1,000 feet of timber purchased by the Company beginning nine (9) months after said Maximill is in substantially full operation, as reasonably determined by Ivan Landreth, payable to Sellers at the same time Buyer pays the Sellers of said timber, measured according to the so-called "Standard Scribner Scale" as presently used.

Interest at the annual rate of ten percent (10%) from the date of Closing shall be paid on the average unpaid balance of said \$900,000 note semi-annually beginning six (6) months after the date of said note, computed over the proceeding six-month period. Said note shall be in the form attached hereto marked Exhibit "A" and shall be secured by a second mortgage on the plant and equipment of the Company in a form satisfactory to Rainier National Bank and Sellers' attorney. Said note and mortgage shall be subordinate only to:

(a) Bank and institutional debt of the Company incurred from time to time;

(b) Debt incurred to finance the purchase of the timber by the Company in the ordinary course of business;

(c) Pre-existing liens;

(4) Debt incurred from time to time in connection with equipment lease—purchase financing and similar financing of machinery and equipment incurred in the ordinary course of business. The subordination provisions of said note shall be acceptable to the Bank.

Buyer agrees to arrange necessary guarantees, if any, to secure government contracts for the purchase of timber on a deferred payment basis.

2. Sellers and the Company hereby jointly and severally warrant and represent as follows:

(a) The stock to be delivered to the Buyer represents all of the issued and outstanding capital stock of any class of the Company and there as no shares reserved for issue or committed to be issued to anyone for any purpose. Said five hundred (500) shares are owned by the three Sellers as follows:

Ivan K. Landreth	380 shares
Ivan K. Landreth, Jr.	60 shares
Thomas E. Landreth	60 shares
Total shares issued and outstanding:	500 shares

Said shares are validly issued, fully paid and non-assessable, and Sellers have clear and unencumbered title to said shares. There are no applicable restrictions, agreements or other facts which would prevent each Seller from delivering free and unencumbered title to said shares at the Closing.

(b) This Agreement has been duly-executed by each of the Sellers and the execution and performance of this Agreement by them and by the Company will not violate or result in a breach of or constitute a default under any agreement, instrument, judgment, order or decree nor will it constitute a violation of or conflict with any fiduciary duty of any Seller.

(c) None of the Sellers nor any member of his family has any claim or claims against the Company and the Company is not obligated or liable to any such persons in any way or for any amounts except unpaid salaries or other compensation incurred in the ordinary course of business and disclosed to the Buyer in the financial statements attached hereto and an unsecured note in the amount of Twenty Thousand Dollars (\$20,000), payable to Sellers.

(d) None of the Sellers owns any interest or profit participation in outside business enterprises which may be competitive with the Company, and each agrees that he will not own directly or indirectly any interest in or engage in any such business which may be competitive with the Company for a period of five (5) years from the final Closing.

(e) Sellers have employed a broker in connection with this transaction who will look only to the Sellers for a



brokerage commission or other compensation in connection therewith and Buyer shall not be liable for any such commissions or other compensation.

(f) The balance sheet, operating statements and other financial information concerning the Company attached hereto as Exhibit "B" are true and correct, fairly represent the financial condition of the Company, its assets, liabilities and results of operations for the periods covered and such statements are prepared in accordance with generally-accepted accounting principles applied on a basis consistent with prior periods. There are no material liabilities, obligations or commitments of the Company of any nature not appearing on said financial statements or in the footnotes thereto, including, but not limited to, supply contracts in excess of Five Thousand Dollars (\$5,000) in each case, contracts for the purchase of equipment, contracts or commitments for present or deferred compensation, and any other such contracts or commitments, except as set forth in Exhibit "B-1" attached hereto.

(g) The physical assets of the Company consist of an integrated lumber manufacturing facility in Tonasket, Washington, including a new "Maximill" presently nearing completion, lumber-drying facilities consisting of a single 80' four-track kiln with an average holding capacity of about 210,000 FBM and maximum capacity of about 250,000 FBM, a new office building, a planer building, new sorting shed, maintenance shop, a metal sawmill building under construction and a log-handling and debarking facility, including machinery, vehicles and equipment capable of cutting and transporting logs as itemized in Exhibit "C" attached hereto. Construction of the Maximill and related facilities are presently on schedule with a scheduled completion date of about November 30, 1977. This mill is being constructed with first-quality and suitable equipment in a workmanlike manner and, on information and belief, Sellers state that

the mill upon completion, if properly operated, will produce an overrun of at least fifty percent (50%) of the presently accepted so-called "Standard Scribner Scale" for measuring logs. The other equipment presently used in the operation of the mill is suitable for the purpose and in good operating condition, normal wear and tear excepted.

(h) No distributions of money or assets of the Company and no other transactions except in the usual course of business have taken place since the date of the attached balance sheet and none will take place prior to the Closing. No additional debt will be incurred prior to the Closing (other than in the usual course of business) without the prior written consent of the Buyer. The term "usual course of business" includes the purchase of timber appropriate in the opinion of Ivan Landreth for the proper conduct of the business on a continuing basis, having in mind the anticipated production capacity of the plant upon completion of the "Maximill."

(i) The Company has timely filed all required state, federal and other tax returns required by law; all such returns are proper and all taxes shown to be due and all additional assessments have been paid. The federal income tax returns have been audited by the Internal Revenue Service through the taxable year 1975. The attached balance sheet (Exhibit "B") adequately reflects all the proper accruals for tax liabilities reflecting operations to the date of this Agreement.

(j) The Company has in the past purchased most of its requirements for timber from SBA/U.S. FOREST SERVICE ("SBA"), a government agency which sells timber from Okanogan National Forest and Colville National Forest. Presently, twenty-seven percent (27%) of Okanogan National Forest timber sales and forty-four percent (44%) of such sales from Coleville National



Forest are set aside for SBA sales under current government regulations and procedures. Sellers and Company know of no impending change in said policies and procedures or of any other fact which would adversely affect the mill's ability to obtain an adequate supply of timber. The Company has contracts to purchase approximately 27 million bd. ft. of timber from SBA and presently has cut logs either in the forest or at the plant of approximately 3 million bd. ft. of timber based on the Standard Scribner Scale. Attached hereto as Exhibit "D" is a list of all material contracts for the purchase of timber.

(k) The principal customers of the Company consist of laminating mills and wholesale lumber dealers. Attached hereto as Exhibit "E" is a list of the principal customers to whom the Company has sold products in the past three (3) years.

(l) The Company has clear and marketable title to all of its real and personal property and assets of every type and description free and clear of all mortgages, liens, pledges or other charges or encumbrances of any kind except as set forth in the attached balance sheet and footnotes thereto. All of the properties and assets of the Company are in its possession and conform to all applicable laws, rules and regulations; there are no zoning or other restrictions on any real property owned by it which would adversely affect the effective use of such property in the conduct of its business.

(m) The Company has no contracts with any union and operates on a non-union basis. Sellers and Company know of no impending attempt to unionize the Company.

(n) The Company will have at the Closing a binder for valid fire insurance coverage in a form usual to this type of business in a total amount equal to the full insurable value of the major components of the integrated mill.

(o) There is no litigation, proceeding, claim or governmental investigation pending or threatened against, or relating to, the Company or its properties or business, other than as set forth in Exhibit "G" hereto.

### 3. Buyer warrants and represents as follows:

(a) He is an individual residing at 52 Essex Road, Newton, Massachusetts, 02167, and is under no disability to enter into this Agreement and may lawfully carry out its provisions under all applicable laws and regulations.

(b) It is contemplated that a corporation ("Substituted Buyer") will be organized for the purpose of carrying out this transaction. Said corporation will be validly organized and existing and will have all the power and authority necessary to carry out and perform this Agreement. Upon its formation, Buyer will assign all of his rights and obligations in and to this Agreement to said corporation and thereupon said corporation will be substituted as the Buyer with the same legal effect as though it had been the original party to this Agreement.

(c) Said corporation will take all proper legal steps to lawfully perform and carry out this Agreement, including qualifying to do business in the State of Washington and such other jurisdictions as may be necessary in the opinion of Buyer. It is contemplated that immediately upon the acquisition of the stock of the Company by the corporate Buyer, Landreth Timber Company, Inc. will be liquidated into said corporation and the name of said corporation changed to Landreth Timber Co., Inc. Sellers and the Company agree to take all action required by Buyer which in the opinion of Buyer is necessary or appropriate to carry out the above plan.

4. (a) The Closing of this transaction shall take place on November 4, 1977, at the office of Graham, McCord & Dunn, Seattle, Washington, or at a time and place otherwise mutually agreed upon between the parties. All the

conditions precedent to Closing as hereinafter set forth shall have been complied with by the parties on or before the date of Closing.

(b) At the Closing, Sellers shall deliver or cause to be delivered to Buyer the following:

(1) All certificates of stock of the Company, properly endorsed for transfer to Buyer with signatures guaranteed.

(2) The Company's minute book, stock book and all other books and records of the Company.

(3) The signed resignations of all officers and directors of the Company.

(4) A consulting contract in the form attached hereto as Exhibit "F" between the Company and Ivan K. Landreth ("Landreth") for a period of one (1) year at the agreed compensation of Two Thousand Five Hundred Dollars (\$2,500) per month for the first six (6) months and One Thousand Dollars (\$1,000) per month for the last six (6) months. Landreth shall perform such services as are necessary and appropriate to operate the mill during said first six-month period at such times as may be mutually convenient to the parties. During the second six-month period, Landreth shall act as a consultant to the Company at such times and in such capacity as the Company may reasonably request, having regard to Landreth's health and then place of residence.

(c) At Closing, Buyer shall deliver or cause to be delivered to Sellers the following:

(1) Seven Hundred and Fifty Thousand Dollars (\$750,000) cash, which shall include such portion of the One Hundred Sixty-Five Thousand Dollars (\$165,000) deposited under Paragraph 1(a) which has not been loaned to the Company as therein provided.

(2) A subordinated note (Exhibit "A") duly-executed and delivered to Sellers in the amount of Nine Hundred Thousand Dollars (\$900,000), together with a second mortgage or deed of trust securing said note.

(3) A letter of commitment from Rainier National Bank to Sellers as provided in Paragraph 1(b).

5. *Conditions Precedent to the Closing.* All obligations of the parties under this Agreement are subject to the fulfillment prior to or at the Closing of each of the following conditions;

(a) All of the agreements and covenants contained in this Agreement that are to be complied with, satisfied and performed by the respective parties on or before the Closing shall, in all material respects, have been complied with, satisfied and performed.

(b) All of the representations and warranties made by Sellers to Buyer and by Buyer to Sellers in this Agreement or any document furnished or to be furnished by any of them hereunder shall be true and correct in all material respects both on and as of the date of this Agreement and on and as of the date of the Closing.

(c) Buyer shall have received from counsel for Sellers a written opinion dated as of the Closing, addressed to Buyer and satisfactory to Buyer's counsel in form and substance to the effect:

(1) That the corporate existence, good standing under the laws of the state of its incorporation and the authorized and issued stock of the Company are as stated in Paragraph 2 of this Agreement and that neither the Articles of Incorporation nor the By-Laws of the Company (including any amendments thereof) impose any restriction on the transfer by the Sellers of their shares as provided herein.



(2) That the outstanding shares of stock of the Company have been duly and validly issued and are fully paid and non-assessable.

(3) That this Agreement has been duly-executed and delivered by the Sellers and is legally and validly binding on them in accordance with its terms.

(4) That the execution and delivery of this Agreement, the transfer of said shares to Buyer, the consummation of the transactions herein contemplated and compliance with the terms and provisions of this Agreement on the part of the Sellers will not breach any statute or any regulation or conflict with, or result in a breach of the Articles of Incorporation or By-Laws of the Company or any of the terms, conditions or provisions of any agreement or instrument known to said counsel to which any of the Sellers or the Company is a party or is bound.

(5) That there are no options, agreements or commitments of any kind, relating to the capital stock of the Company to which the Company or Sellers are parties.

(6) That, to the best of his knowledge, there is no litigation, proceeding, claim or governmental investigation pending or threatened against, or relating to, the Company or its properties or business, other than as set forth in Exhibit "G."

(7) That, upon the transfer of the stock of the Company and payment therefor in accordance with the terms of this Agreement, Buyer will have title to such stock free of any liens, encumbrances, claims or other limitations thereon as if Buyer is a bona fide purchaser as defined in the Uniform Commercial Code.

(8) As to such other matters as counsel for Buyer may reasonably request.

(d) The business and properties of the Company shall not have been materially adversely affected since the date hereof, whether by fire, casualty, act of God or otherwise, and there shall have been no other changes in the business, property, financial condition or future prospects of the Company that would have a material adverse effect on the value of its business or assets or upon its potential earning power.

(e) Sellers and the Company shall have certified that no adverse change has occurred which would materially affect the financial conditions of the business or its operations.

(f) The pre-acquisition audit of the business and records of the Company (to be made by Buyer prior to the Closing with the cooperation of Sellers and Company) in the reasonable opinion of Buyer will have revealed no facts materially and adversely affecting the business or its net worth. Buyer shall pay the expense of the independent Certified Public Accountant employed by Buyer to make such audit.

(g) Sellers and the Company shall have furnished to Buyer all supporting papers and documents reasonably requested to Buyer and shall have taken all action reasonably requested by Buyer in connection with the orderly transition of the business to Buyer.

6. (a) Sellers and the Company jointly and severally agree to indemnify, defend and hold Buyer harmless from all claims filed against the Company arising out of actions in respect of:

(1) All obligations and liabilities of the Company, whether accrued, absolute, fixed, contingent or otherwise, arising on or before the date of the Company balance sheet attached hereto as Exhibit "B", to the extent not reflected or reserved against thereon in the notes thereto.



(2) All liabilities of or claims against the Company arising out of the conduct of its respective businesses from and after the date of said balance sheet, to and including the Closing date, other than those incurred in the ordinary course of business or disclosed in or pursuant to this Agreement.

(3) Any loss, liability or damage suffered or incurred by Buyer or the Company because any representation or warranty contained herein, in any document furnished or required to be furnished pursuant to this Agreement by Sellers or the Company, or any document furnished to Buyer in connection with the Closing hereunder shall be false or misleading in any respect.

(4) All reasonable costs and expenses (including reasonable attorneys' fees) incurred by Buyer or the Company in connection with the defense of any action, suit, proceeding, demand, assessment or judgment incident to any of the matters indemnified against in this Paragraph 6(a).

(b) Buyer shall give Sellers notice as soon as reasonably practicable of any claim against Buyer or the Company which might give rise to a claim against Sellers based on the indemnity agreement contained in Paragraph 6(a), stating the nature and basis of said claims and the amount thereof. Sellers shall have a period of thirty (30) days within which, by written notice to Buyer, to assume the defense of any such claim. Notwithstanding the foregoing, Buyer may, pending Sellers' decision to defend, file notice of appearance or otherwise respond to any proceeding if the same shall be necessary in Buyer's judgment to preserve or protect the Company's and/or Buyer's position. If Sellers fail or refuse to accept such defense or to pay any such claim, Buyer may, in his sole and absolute discretion, defend against the same or settle or pay the same in such manner as he deems prudent. Buyer may withhold from the next payment or payments

due, or to become due, to Sellers under the terms of this Agreement, until the liability of Sellers for any such claim has been finally determined.

#### 7. *Miscellaneous.*

(a) In the event of a default by Buyer (while Sellers and/or the Company are not in default) which is not cured within thirty (30) days after written notice of said default, the balance of the down-payment of One Hundred Sixty-Five Thousand Dollars (\$165,000) as provided herein (plus the income thereon), plus any loans of Buyer to the Company from said \$165,000, shall be paid to Sellers as liquidated damages and all rights and obligations of the parties under this Agreement shall terminate.

(b) In the event of a default by Sellers or the Company (while Buyer is not in default) which is not cured within thirty (30) days after written notice of said default, Buyer may at his or its option waive said default and require performance by Sellers of this Agreement, or may terminate this Agreement as hereinafter provided. If said default results in whole or in part from or in a reduction in the net worth of the Company (other than in the usual course of business) compared to the balance sheet attached hereto as Exhibit "B", the purchase price shall be reduced accordingly, or Buyer may elect to terminate the transaction and in such event the Escrow Agent shall return the balance of said deposit of One Hundred Sixty-Five Thousand Dollars (\$165,000) (plus the income thereon) to Buyer, and the Company shall forthwith pay to Buyer the balance including accrued interest on any loan of Buyer to the Company, and all rights and obligations of the parties shall cease.

(c) Each party shall pay his or its costs of attorneys or accountants or similar fees and expenses. The Buyer shall bear the costs of the Escrow Agent.

(d) The warranties and representations of the parties shall survive the Closing. Except as to federal and state tax liabilities, said survival shall be limited to two (2) years from the date of Closing.

8. This Agreement binds and benefits the heirs, executors, administrators, successors and assigns of the parties hereto.

9. The parties agree that this Agreement may be properly executed by Ivan K. Landreth individually and as Agent for Ivan K. Landreth, Jr. and Thomas E. Landreth, said Ivan K. Landreth having represented that he is duly-authorized by said other Sellers to execute this Agreement and take any action necessary or appropriate to performing this Agreement.

EXECUTED under seal in duplicate this 6th day of October 1977.

/s/ Ivan K. Landreth  
IVAN K. LANDRETH

/s/ Thomas E. Landreth  
THOMAS E. LANDRETH

/s/ Ivan K. Landreth, Jr.  
IVAN K. LANDRETH, JR.  
"Sellers"  
LANDRETH TIMBER COMPANY, INC.

By /s/ Ivan K. Landreth  
Its President

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
"Buyer"

## LIST OF EXHIBITS

### *Exhibit*

- A Subordinated \$900,000 Note
  - B Balance Sheet
  - B-1 Material liabilities, obligations or commitments not appearing on financial statements
  - C Itemized scheduled of physical assets
  - D List of all material contracts for purchase of timber
  - E List of principal customers within the past three years
  - F Consulting Contract
  - G List of pending or threatened litigation, proceedings, claims or governmental investigations
- Bank's letter of commitment as provided in Paragraph 1(b)

The parties agree that the Exhibits shall be delivered to the parties prior to and such delivery shall be condition precedent to Closing and that, when so delivered shall be attached to and incorporated into this Agreement as of the execution hereof.

/s/ Ivan K. Landreth

# ASSIGNMENT AND ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION

Pursuant to Section 3(b) of a Stock Purchase Agreement dated October 6, 1977 by and among Ivan K. Landreth, Thomas E. Landreth, Ivan K. Landreth, Jr., Landreth Timber Company, Inc. and Samuel S. Dennis 3d, said Samuel S. Dennis 3d hereby certifies that he has taken all steps contemplated in and required by said Section 3(b) to organize the corporation referred to in said Section 3(b) for whose use, benefit and advantage and on whose behalf said Samuel S. Dennis 3d entered into the said Stock Purchase Agreement solely as an accommodation party. Therefore, as contemplated and required by said Section 3(b), Samuel S. Dennis 3d hereby assigns to B & D Company, Inc., a Delaware corporation, all of his rights and obligations in, to and under the said Stock Purchase Agreement, with the effect set forth in said Section 3(b).

Executed as a sealed instrument as of this 7th day of November, 1977.

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D

The undersigned B & D Company, Inc. hereby represents and warrants to the several parties to the Stock Purchase Agreement that, as contemplated by said Section 3(b), it is validly organized and existing and has all the power and authority necessary to carry out and perform the Stock Purchase Agreement.

The undersigned hereby accepts the assignment by Samuel S. Dennis 3d set forth above of all his rights and obligations in, to and under the Stock Purchase Agreement. The undersigned expressly assumes all such obligations of Samuel S. Dennis 3d and by this instrument agrees to be substituted as the Buyer (as that term is

defined in the Stock Purchase Agreement) with the same legal effect as though the undersigned and not Samuel S. Dennis 3d had been the original party to the Stock Purchase Agreement.

Executed as a sealed instrument as of this 1st day of November, 1977.

B & D COMPANY, INC.

By /s/ John Bolten, Sr.  
JOHN BOLTEN, SR.  
Chairman of the Board



## PROMISSORY NOTE

The undersigned, Landreth Timber Company, Inc. ("Maker"), hereby promises to pay on demand to Samuel S. Dennis, 3d ("Lender"), or order, the amount of One Hundred Fifty Thousand Dollars (\$150,000), said amount to be paid by Maker on demand. Said amount shall bear no interest, provided that, if it is not paid within five (5) days after demand, interest shall accrue on the unpaid balance thereof at the rate of one percent (1%) per month until said amount is paid in full.

Maker hereby waives presentment, demand, notice of protest.

EXECUTED under seal November 16, 1977.

LANDRETH TIMBER COMPANY, INC.

By /s/ Ivan K. Landreth  
IVAN K. LANDRETH  
President  
Authorized Officer

## EXHIBIT B

LANDRETH TIMBER COMPANY, INC.

*Financial Statements*

(unaudited)

September 30, 1977

## HOMCHICK KOCH &amp; ASSOCIATES

## CERTIFIED PUBLIC ACCOUNTANTS

517 North Mission Street • Post Office Box 1371  
Wenatchee, Washington 98801 • Telephone 509/663-1131

October 26, 1977

Landreth Timber Company, Inc.  
Tonasket, Washington

The accompanying balance sheet of Landreth Timber Company, Inc. as of September 10, 1977, the related statements of income and changes in financial position and allied schedules for the nine months then ended were not audited by us and accordingly we do not express an opinion on them.

/s/ Homchick Koch & Associates

## Exhibit A

## LANDRETH TIMBER COMPANY, INC.

## Balance Sheet

(unaudited)

September 30, 1977

ASSETSCURRENT ASSETS

Cash in checking account		26 722
Cash in savings account		105 765
Accounts receivable (net of \$1,000 allowance for doubtful accounts)		3 217
Provision for Federal income tax refund		53 636
Inventories -		
Planned lumber (197 M ft.)	39 566	
Rough lumber (24 M ft.)	5 774	
Logs (1,045 M ft.)	184 913	230 253
Timber stumpage deposits		16 371
Total current assets		436 965

PROPERTY, MILL AND EQUIPMENT

Equipment	916 382	
Buildings	92 970	
	1 007 352	
Less: Accumulated depreciation	592 403	
	414 949	
Land	5 000	419 949

OTHER ASSETS

Goodwill		1 002
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## TOTAL ASSETS

857 916

The accompanying notes are an integral part of these financial statements.

(unaudited)

LIABILITIES AND STOCKHOLDERS' EQUITYCURRENT LIABILITIES

Accounts payable		19 261
Note payable to bank, second mortgage on mill		100 000
Note payable to bank		50 000
Note payable to Ivan K. Landreth, 8%		20 000
Accrued expenses -		
Wages	12 300	
Taxes and withholding	25 114	37 414
Current portion of long-term loan		50 000
Total current liabilities		276 675

UNEXPENDED FIRE INSURANCE PROCEEDS (Note 3)

76 025

LONG-TERM LOAN

Plant and equipment collateral loan, 90% guaranteed by SBA due in \$5,400 monthly installments including 9-1/2% interest	249 985	
Less: Current portion shown above	(50 000)	199 985

STOCKHOLDERS' EQUITY

Common stock - par value \$100 - authorized 1,000 shares - issued and outstanding 500 shares	50 000	
Retained earnings -		
Balance - January 1, 1977	392 795	
Less: Net loss for the nine months ended September 30, 1977	(149 411)	
Add: Actual Federal income tax refund claim in excess of amount accrued at December 31, 1976	11 847	
Balance - September 30, 1977	255 231	305 231

TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY657 916

## Exhibit B

LANDRETH TIMBER COMPANY, INC.Statement of Income

(unaudited)

For the Nine Months Ended September 30, 1977

	<u>M Feet</u>	<u>Rate Per M</u>	<u>Total</u>
<u>INCOME</u>			
Lumber sold			
Planed fir	2 679	220.97	591 931
Rough fir	176	304.33	53 562
	<u>2 855</u>	<u>226.11</u>	<u>645 543</u>
Cost of lumber sold -			
Planed fir		277.05	742 226
Rough fir		240.60	42 346
		<u>274.81</u>	<u>784 572</u>
		<u>(48.70)</u>	<u>(139 029)</u>
	<u>Sales</u>	<u>Costs</u>	
Sale of wood chips	38 493	39 027	(.19)
Miscellaneous income			3.95
			<u>3.76</u>
			<u>(44.94)</u>
			<u>(128 298)</u>
<u>EXPENSES</u>			
Administrative		19.83	56 772
Discounts allowed		4.31	12 322
Shipping		1.93	5 555
		<u>26.18</u>	<u>74 749</u>
<u>NET LOSS BEFORE PROVISION FOR FEDERAL INCOME TAX REFUND</u>		<u>(71.12)</u>	<u>(203 047)</u>
<u>PROVISION FOR FEDERAL INCOME TAX REFUND</u>			<u>53 636</u>
<u>NET LOSS</u>			<u>(149 411)</u>
<u>NET LOSS PER SHARE</u>			<u>(298.82)</u>

The accompanying notes are an integral  
part of these financial statements.



## Exhibit C

LANDRETH TIMBER COMPANY, INC.  
Statement of Changes in Financial Position  
(unaudited)  
For the Nine Months Ended September 30, 1977

SOURCE OF FUNDS

Actual Federal income tax refund claim in excess of amount accrued at December 31, 1976	11 847
Credit received on equipment purchased in 1976	<u>1 194</u>
	<u>13 041</u>

APPLICATION OF FUNDS

Net loss	149 411
Less: Depreciation not requiring an outlay of working capital	<u>(50 580)</u>
Working capital used in operations	98 831
Payments on principal of long-term plant and equipment loan	<u>6 225</u>
	<u>105 056</u>

DECREASE IN WORKING CAPITAL

(92 015)

WORKING CAPITAL AT JANUARY 1, 1977

176 280

WORKING CAPITAL AT SEPTEMBER 30, 197784 265Summary of Changes in Working CapitalINCREASE (DECREASE) IN CURRENT ASSETS

Cash in bank	117 845
Accounts receivable	2 871
Inventories	57 248
Timber stumpage deposits	(7 209)
Provision for Federal income tax refund	<u>(80 364)</u>
	<u>90 391</u>

INCREASE (DECREASE) IN CURRENT LIABILITIES AND UNEXPENDED FIRE INSURANCE PROCEEDS

Accounts payable	6 939
Accrued expenses	24 517
Notes payable to bank	100 000
Balance due Internal Revenue Service per audit	(25 075)
Unexpended fire insurance proceeds	<u>76 025</u>
	<u>182 406</u>

DECREASE IN WORKING CAPITAL(92 015)

The accompanying notes are an integral part of these financial statements.

## Exhibit D

## LANDRETH TIMBER COMPANY, INC.

*Notes to Financial Statements*  
(unaudited)

September 30, 1977

**NOTE 1—SIGNIFICANT ACCOUNTING POLICIES**

The accrual method of accounting is used for all significant assets and liabilities.

Current assets and current liabilities include items expected to be, or which may be, realized or liquidated during the next twelve months.

Inventories are valued at the lower of average cost of market on a first-in, first-out basis.

Fixed assets are stated at cost. Maintenance and repairs, including the replacement of minor items, are charged to income and major additions are capitalized. Depreciation is computed primarily by the straight line method for items acquired prior to 1972 and declining balance method for items acquired after 1971.

Supplies are not a significant asset item and are expensed as purchased.

Other assets are valued at cost.

The corporation has approximately 2,000,000 ft. of logs "decked" in the woods in which it has incurred approximately \$100,000 of logging expenses. These logs have not been released by the forest service and the "stumpage" has not yet been incurred. The logging costs and some additional road costs have been expensed in the income statement and no asset is shown in the balance sheet.

*NOTE 2—MILL SHUTDOWN AND FIRE*

The mill was shut down in April, 1976 and was not reopened until March 1, 1977. A fire on May 10, 1977 destroyed substantially all of the sawmill portion of the mill. The mill was shut down again except the cut lumber on hand was processed through the dry kiln and planer which was not hurt in the fire. The operations for the nine months ended September 30, 1977 (especially the cost per M figures) do not reflect normal operating conditions.

The sawmill is in the process of being rebuilt and management estimates that the Helle portion of the sawmill construction will be completed by October 31 and in operation in November. The Maxi portion of the sawmill construction is expected to be completed in early December and in operation by the end of December.

*NOTE 3—UNEXPENDED FIRE INSURANCE PROCEEDS*

The corporation received \$700,000 fire insurance proceeds in June, 1977. Management estimates that it will cost between \$850,000 to \$900,000 to rebuild the sawmill. The proceeds not expended at September 30, 1977 are in a savings account and will be withdrawn and used as the mill is rebuilt.

*EXHIBIT B-1*

**MATERIAL LIABILITIES, OBLIGATION OR  
COMMITMENTS NOT APPEARING ON THE  
FINANCIAL STATEMENTS**

1. The Washington State Use Tax has not yet been determined or paid on certain equipment purchased outside the State of Washington and which has been or will be installed as a part of the new saw mill construction. At such time as the installation is completed this tax will become be determined and will become due.

2. Machinery and equipment contracts in connection with the new saw mill installation and will continue to come due as the balance of the machinery and equipment is delivered and installed. For deliveries and installation to date these contracts are on a substantially current basis.

## EXHIBIT C

## APPENDIXES

## SUMMARY OF PLANT &amp; PLANT EQUIPMENT

## SUMMARY OF NEW CONSTRUCTION

Concrete work 300 C.Y. @ 90.....	\$27,000	
Metal building (erected).....	75,000	
Walkways, stairs, handrails .....	15,000	
Lighting.....	10,800	
TOTAL CONTRACTORS COST.....	\$127,800	
CONSTRUCTION O.H., INT., PROFIT, 15%.....	19,200	
COMPLETED VALUE, NEW MILL BLDG.....		\$147,000
Sawmill equipment (installed) - Schedule "A".....	\$955,700	
Structural steel substructure 140,000# @ 0.70.....	98,000	
Hopperwork 20,000# @ 0.80.....	16,000	
Air and water piping.....	15,000	
Power and control wiring.....	270,000	
TOTAL EQUIPMENT COST.....	\$1,354,700	
CONSTRUCTION, O.H., INT., PROFIT 15%.....	203,000	
COMPLETED VALUE, NEW MILL EQUIPMENT.....		\$1,557,700
TOTAL VALUE OF NEW CONSTRUCTION WHEN COMPLETED.....		\$1,704,700

## SUMMARY OF EXISTING FACILITIES

Dry sorting shed.....	\$18,000	
Planer building .....	NIL	
Shop building - 1740 S.F.....	5,000	
Main office - 860 S.F.....	16,000	
Yard office & storage - 510 S.F.....	3,000	
Yard toilet & washroom - 220 S.F.....	4,000	
PRESENT VALUE, EXISTING BUILDINGS.....		\$46,000
Planing mill equipment (installed) - Schedule "A".....	\$92,600	
Existing log handling & edge sorter - Schedule "C".....	92,300	
Kilns & Kiln equipment - Schedule "D".....	240,300	
Chip & fuel system - Schedule "E".....	71,400	
Shop & misc. surplus equipment - Schedule "F".....	33,200	
Office equipment - Schedule "G".....	4,600	
Power & control wiring.....	32,000	
PRESENT VALUE, EXISTING EQUIPMENT.....		\$566,600
TOTAL PRESENT VALUE, EXISTING PLANT & BUILDINGS.....		\$612,600
TOTAL VALUE ALL PLANT & EQUIPMENT.....		\$2,317,300

PEASE &amp; BEADLING ENGINEERS INC

CLIENT RAINIER NATIONAL BANK

JOB NO. 11

PROJECT LANDRETH TIMBER CO. APPRAISAL

-2-



ITEM NO.	DESCRIPTION (motors & drives inc. unless noted)	EQUIPMENT W/TAXES	INSTAL- LATION	FREIGHT & HANDLING	TOTAL
1.	Maxi-Mill w/infeed & outfeed, rail beams	\$446,600	\$42,000	INC.	\$488,600
2.	Maxi-Mill saws, knives collars mis. equipment	11,900	INC.	300	12,200
3.	Helle Package Mill w/saws & laser lights	77,700	8,000	3,900	89,600
4.	Beloit head rig slabber w/setworks	22,000	2,000	700	24,700
5.	Filer & Stovell Edger w/infeed, outfeed, saws & lights	46,300	4,000	1,400	51,900
6.	Edger MG set	3,300	300	100	3,900
7.	Rotech resaw w/infeed, outfeed & saws	26,000	1,300	700	28,200
8.	Resaw MG set	3,000	300	100	3,400
9.	Schurman trimmer w/unscrambler, feeder saws	21,000	2,000	800	23,800
10.	Quincy air compressor w/dryer	6,300	500	200	7,000
11.	Gardiner-Denver air compressor w/dryer	7,900	1,300	300	9,900
12.	Soderhamn 48" chipper	9,000	700	300	10,000
13.	Chipper infeed conveyor, West Salem vibrating conveyor	8,400	900	300	9,600
14.	Grinding & filing equipment	11,300	1,000	400	12,900
15.	Lumber transfers & rollicases	78,000	16,000	2,000	96,000
16.	Waste conveyors	46,000	8,000	1,300	55,300
17.	Small log deck to Maxi-Mill	21,000	7,000	700	28,700
	TOTAL				\$933,700

PEASE & BEADLING ENGINEERS INC. CLIENT RAINIER NATIONAL BANK JOB NO. 113  
PROJECT LANDRETH TIMBER CO. APPRAISAL -12-

ITEM NO.	DESCRIPTION (motors & drives inc. unless noted)	EQUIPMENT W/TAXES	INSTAL- LATION	FREIGHT & HANDLING	TOTAL
1.	Planer, w/infeed table & outfeed rolls	\$11,000	\$1,300	\$300	\$13,000
2.	Trimmer w/saws & controls	22,000	3,000	1,000	26,000
3.	Splitter	6,000	300	200	6,700
4.	Air compressor	4,800	600	300	5,700
5.	Hog	2,800	400	200	3,400
6.	<del>Moisture detector</del>	3,000	600	100	<del>3,700</del>
7.	Knife grinding equipment	4,500	300	200	5,000
8.	Cut off saw	200	100	---	300
9.	Transfers & conveyors, installed				16,000
10.	Low pressure pneumatic conveying system, installed				9,000
11.	General construction				4,000
	TOTAL				\$92,800

PEASE & BEADLING ENGINEERS INC. CLIENT RAINIER NATIONAL BANK JOB NO. 113  
PROJECT LANDRETH TIMBER CO. APPRAISAL -13-



EDITOR'S NOTE

PAGES 240 thru 247 WERE POOR  
HARD COPY AT THE TIME OF FILMING.  
IF AND WHEN A BETTER COPY CAN BE  
OBTAINED, A NEW FICHE WILL BE  
ISSUED.





1.	30"x36" steel safe.....	\$500
2.	2- 5' desks @ \$150.....	300
3.	1- 5' desks w/typing stand attached.....	140
4.	3 swivel chairs @ \$50.....	150
5.	14 chairs @ \$25.....	350
6.	5- 4-drawer steel file cabinets @ \$120.....	600
7.	2 electric Olivetti typewriters @ \$250.....	500
8.	2 electric printing calculators @ \$120.....	240
9.	1 Sunbeam copy machine.....	320
10.	1- 42" round conference table.....	150
11.	2 fire extinguishers @ \$10.....	20
12.	1- 7'x3 1/2' supply cabinet.....	80
13.	1- 6' compartment foot locker.....	140
14.	19 cardboard file drawer @ \$5.....	95
15.	2- 6'x5' bookcase @ \$60.....	120
16.	1 paymaster check protector.....	100
17.	1 copy machine stand 26"x26".....	40
18.	1 typewriter stand.....	50
19.	2 decimal C scale sticks @ \$50.....	100
20.	1 vacume cleaner.....	30
21.	3 coat & hat racks @ \$20.....	60
22.	1- 2 hole paper punch.....	5
23.	1 radio.....	10
24.	2 double desk trays @ \$10.....	20
25.	4 round waste baskets @ \$5.....	20
26.	1 postal scale.....	15
27.	1 vertical file.....	10
28.	Misc. Accessories.....	20
29.	Misc. safety equipment (hard hats, gloves, lumber aprons, raincoats, ear protectors, first aid).....	300
TOTAL.....		\$4,600

PEASE &amp; BEADLING ENGINEERS, INC.

CLIENT RAINIER NATIONAL BANK

JOB NO. 113

PROJECT LANDRETH TIMBER CO. APPRAISAL

-12-

DESCRIPTION	SERIAL NUMBER	PRESENT VALUE
1964 Caterpillar D5H crawler tractor w/dozer blade, ripper & cab	46A-7660	\$29,500
1963 Caterpillar D6C crawler tractor w/dozer blade, winch & cab	76A-218	13,000
1967 Caterpillar 12-F motor patrol w/ripper	73G-2622	32,500
1952 Callion 11S motor patrol	18-546	3,500
1964 Caterpillar 955 wheel loader	98B-518	37,500
1961 Caterpillar 966A wheel loader	33A-668	10,500
1962 Caterpillar 966A wheel loader	33A-1009	12,500
1964 Hyster H130 fork lift (gas)	B7P1302H	9,500
1965 Hyster H130 E fork lift (diesel)	B7P19935	14,000
1964 Toumotor A-16 fork lift (diesel)	A166 0038	12,000
1965 Toumotor B-16 fork lift (diesel)	none	14,000
1948 Corlinger lumber carrier	1487	500
Ross 6636 lumber carrier	1968	500
Ross 80.7236 lumber carrier	85018	500
<u>ACCESSORY EQUIPMENT</u>		
2-Cravel buckets for 966A loaders @ \$2,500 ea.		5,000
Brush blade for D6C tractor		4,000
Chip loader blade for fork lift		3,000
TOTAL		\$205,000

PEASE &amp; BEADLING ENGINEERS, INC.

CLIENT RAINIER NATIONAL BANK

JOB NO. 113

PROJECT LANDRETH TIMBER CO. APPRAISAL

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## SCHEDULE "I" — Highway Equipment

DESCRIPTION	SERIAL NUMBER	PRESENT VALUE
1952 Ford 1/2 ton pickup	F1D2RM10147	\$300
1963 Chevrolet 1/2 ton pickup	C13452144984	800
1956 International 1/2 ton 4x4 pickup	4X414749	1,000
1968 Chevrolet 1/2 ton 4x4 pickup	K51482139494	1,500
1972 Chevrolet 1/2 ton 4x4 pickup	1422153870	2,500
1975 Ford 3/4 ton F-250 4x4 pickup	F25YRV63679	4,200
1951 GMC Dump Truck	B270781127	1,300
1963 Ford T-750 Dump Truck	T75MV362330	3,200
1963 GMC Tandem Dump Truck Model WVS011	J2031K	4,300
1972 Volvo sedan	1646364037937	3,000
<u>ACCESSORY EQUIPMENT</u>		
1975 Pickup canopy 43 inches high		300
2-Fireboxes w/tools for pickups @ \$300 ea.		600
2- Fuel tanks w/hand pumps (in pickups) @ \$600 ea.		1,200
1200 Gallon water tank		800
1964 Trailer-mounted pumper w/300 gallon tank	78668	2,500
1967 Pacific trailer-mounted pumper w/300 gallon tank	1290	2,500
TOTAL		\$31,000

PEASE &amp; BEADING ENGINEERS, INC.

CLIENT RAINIER NATIONAL BANK  
PROJECT LANDRETH TIMBER CO. APPRAISALJOB NO. 113  
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1- 7.50-16 unmounted recap 100% tread.....360  
 1- 9.00-20 unmounted recap 30% tread..... 75  
 1- 9.00-20 unmounted recap 20% tread..... 75  
 1- 9.00-20 mounted recap 10% tread.....115  
 1- 9.00-20 mounted recap 60% tread.....140  
 1- 9.00-20 mounted recap 40% tread.....120  
 1-10.00-20 mounted recap 60% tread.....140  
 1-10.00-20 mounted recap 80% tread.....180  
 1- 9.00-20 mounted recap 90% tread.....190  
 1-10.00-20 unmounted recap 100% tread.....160  
 1-10.00-20 unmounted recap 25% tread..... 75  
 1-10.00-20 unmounted recap 75% tread.....130  
 1-10.00-20 unmounted recap 80% tread.....145  
 1- 9.00-20 unmounted recap 80% tread.....135  
 1- 8.00-14 unmounted new 100% tread..... 70  
 1- 7.00-13 unmounted new 70% tread..... 40  
 1-10.00-13 mounted new 95% tread.....100  
 1- 9.00-20 unmounted recap 70% tread.....120  
 1- 9.00-20 unmounted recap 70% tread.....120  
 1-29.50-29 unmounted recap 60% tread.....320  
 1-18.00-23 mounted recap 30% tread.....200  
 1-14.00-24 mounted new 25% tread.....170  
 1-14.00-24 unmounted new 50% tread.....160  
 TOTAL TIRES.....\$3,040

PEASE &amp; BEADING ENGINEERS, INC.

CLIENT RAINIER NATIONAL BANK  
PROJECT LANDRETH TIMBER CO. APPRAISALJOB NO. 113  
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SCHEDULE "K" — Lumber &amp; Log Inventory

ITEM	QUANTITY FBN	PRICE (\$/MBF)	VALUE
1x4 Select	5,407	300	\$1,622
1x4 Lamstock	8,788	160	1,406
1x4 Utility	21,243	100	2,123
1x6 Select	2,771	350	970
1x6 Utility	8,869	100	887
1x8 Select	614	350	215
1x8 Lamstock	3,887	200	777
1x8 Std. & Constr.	1,700	150	255
1x8 Utility	600	100	60
1x6 Whitewood	700	120	84
1x8 Whitewood	100	150	15
2x2 Select	1,898	300	569
2x2 Std. & Constr.	7,312	170	1,243
2x2 Utility	5,463	170	928
2x3 Select	1,520	300	456
2x3 Std. & Constr.	9,195	170	1,563
2x3 Utility	6,965	170	1,184
2x3 Economy	2,340	50	117
2x4 Select	7,236	300	2,171
2x4 Lamstock	31,500	280	14,420
2x4 Economy	14,717	50	736
2x4 Whitewood	2,600	220	572
2x6 Select	1,328	300	398
2x6 # 1 & 2	8,352	250	2,088
2x6 # 4	3,750	50	188
2x6 Whitewood	1,500	240	360
2x8 Select	3,889	300	1,167
2x8 # 4	13,776	50	689
2x8 Whitewood	300	200	60
2x10 Select	1,000	300	300
2x10 # 4	2,800	50	140
2x12 # 4	800	50	40
TOTAL LUMBER	203,145		\$37,822
Fir & Larch logs	631,000	180	113,580
Spruce logs	148,000	180	26,640
Pine logs	246,000	200	49,200
TOTAL LOGS	1,025,000		\$189,420

PEASE & BEADLING ENGINEERS, INC.  
TIMBER APPRAISALCLIENT RAINIER NATIONAL BANK  
PROJECT LANDRETH TIMBER CO. APPRAISALJOB NO. 113  
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SCHEDULE "L" — Analysis of Timber Contracts

U.S.F.S. SALE UNIT	CRAND	FROST	CUMBER	M.O.A.	ZIPPER	PETE'S LOOP	TOTAL
Original sale vol. (MBF)	10,700	10,100	3,700	3,700	5,400	6,100	39,400 MBF
Remaining volume	10,300	8,300	3,700	1,400	500	4,500	29,700 MBF
STUMPAGE COSTS							
Ponderosa pine volume		1,000					
Price (\$/MBF)		109.50					
Pine cost		\$109,500					\$109,500
Fir & Larch volume	10,300	6,500	3,700	1,400	500	4,500	26,900
Price (\$/MBF)	115.69	86.94	99.73	48.67	85.20	83.44	
Fir & Larch cost	\$1,192,000	\$578,000	\$369,000	\$68,000	\$43,000	\$375,000	\$2,275,000
Slash disposal deposit	36.44	\$9.49	\$7.57	\$15.02	\$16.45	\$3.25	
Slash disposal cost	\$66,000	\$79,000	\$28,000	\$21,000	\$8,000	\$15,000	\$217,000
DEDUCT							
Unused road credits	(-\$67,000)	(-\$26,000)	(-\$11,000)	(-\$22,000)	(-\$2,000)	(-\$39,000)	(-\$155,000)
Total stumpage costs	\$1,191,000	\$830,000	\$396,000	\$67,000	\$49,000	\$331,000	\$2,005,000
LOGGING COSTS							
Road construction	\$59,000	\$1,000	\$1,000	\$48,000	\$37,000	\$55,000	\$114,000
Logging (\$34/MBF)	\$350,000	\$202,000	\$176,000	\$48,000	\$37,000	\$153,000	\$976,000
Hauling rate (\$/MBF)	18.00	19.00	19.00	14.00	16.00	23.00	
Hauling cost	\$185,000	\$158,000	\$70,000	\$20,000	\$8,000	\$104,000	\$545,000
DEDUCT							
Logs in deck in woods	1,500	1,500	700				3,700
Cutting & yarding (\$27/MBF)	(-\$40,500)	(-\$40,500)	(-\$18,900)				(-\$140,000)
Total logging costs	\$594,000	\$400,000	\$178,000	\$68,000	\$25,000	\$332,000	\$1,537,000
Total combined cost	\$1,785,000	\$1,230,000	\$574,000	\$155,000	\$74,000	\$463,000	\$4,461,000

Market value of pine @ mill = 1,000 MBF @ \$100..... \$100,000  
 Market value of fir & larch @ mill = 26,900 MBF @ \$180... 4,842,000  
 Total market value of all logs in all sales..... \$4,942,000  
 Less total combined costs to purchase & harvest..... -4,461,000  
 Net value of timber contracts..... \$481,000

PEASE & BEADLING ENGINEERS, INC.  
TIMBER APPRAISALCLIENT RAINIER NATIONAL BANK  
PROJECT LANDRETH TIMBER CO. APPRAISALJOB NO. 113  
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DESCRIPTION OF PROPERTY OF THE APPRAISAL  
BY DOYLE RUARK OF THE PROPERTY OF  
IVAN LANDRETH

LANDRETH TIMBER CO., INC.

*PARCEL NO. 1*—That part of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 10, Township 37 North, range 27 E.W.M., described as follows: Beginning at a point on the East line of said subdivision, distant 1271.6 feet from the Northeast corner thereof and run, thence North 52° and West a distance of 420 feet; thence North 78° 43' West a distance of 359.2 feet; thence South 74° 41' West a distance of 180.0 feet; thence South 16° 25' East a distance of 50 feet; thence South 31° 41' West a distance of 89.4 feet; thence South 43° 24' West a distance of 85.3 feet; thence south 55° 51' West, a distance of 110.85 feet; thence south 52° 22' West a distance of 93.2 feet; thence south 43° 16' East a distance of 52.6 feet; thence South 32° 18' West a distance of 35 feet more or less, to the South line of Said NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , thence Easterly along the south line of said subdivision to the Southeast corner thereof; thence Northerly along the East line of said subdivision to the point of beginning.

*PARCEL NO. 2*—That part of the Se $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 16, Township 37 North, Rge., 27 E.W.M., lying East of the right of way of the Oroville-Tonasket Irrigation District Canal and North of Permanent Highway #28 (Tonasket-Havillan Road).

*PARCEL NO. 3*—That part of the S $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Section 15, Township 37 N., Rge., 27 E.W.M., lying North of the County Road, F18 otherwise known as the Tonasket-Molson Road. Reserving from above described lands, a tract described as follows: Commencing at the Westerly most corner of Tract 32 Orchard View Addition to Tonasket, Washington, thence on and along the Southwesterly line of Tract 32, a distance of 102.9 feet to the point of

beginning being on the southeasterly right of way of the Oroville-Tonasket irrigation Ditch; Thence South 61° 57' East a distance of 200 feet; thence S. 64° 46' East a distance of 208 feet; thence N. 18° 26' East a distance of 762 feet; thence North 80° West a distance of 19.8 feet; thence N. 81° 35' West a distance of 60.0 feet; thence S. 37° 08' West a distance of 200 feet; thence S. 54° 61' West a distance of 200 feet; thence South 38° 03' West a distance of 200 feet; thence South 53° 10' West a distance of 183.7 feet to the point of commencement.

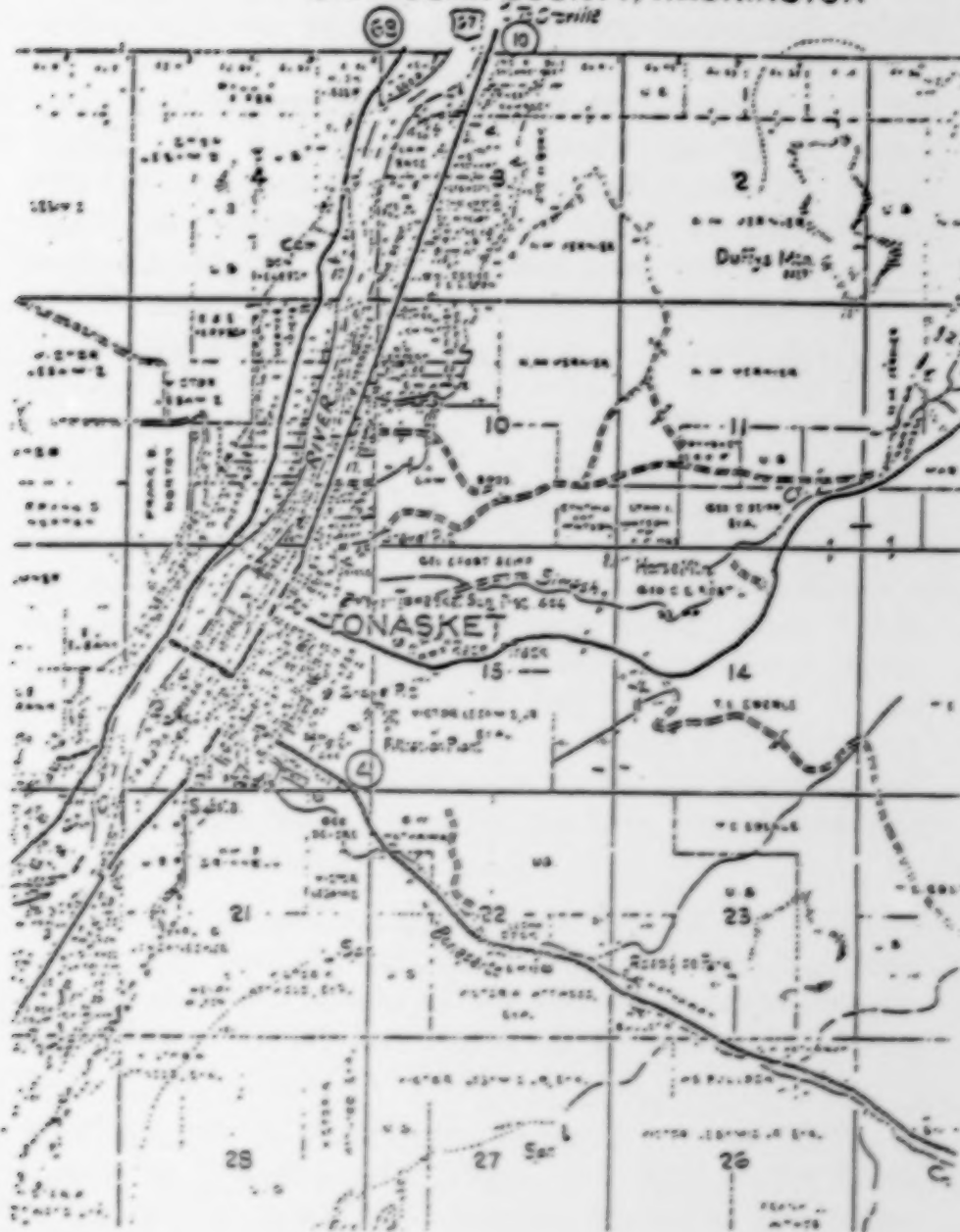
SITUATE IN OKANOGAN COUNTY, WASHINGTON.

S.G.C.

Established Acreage 73 acres approximately.

Doyle Ruark

## OKANOGAN COUNTY, WASHINGTON

*Lumber Customers*

- A & R Lumber Sales, P.O. Box 2803, Eugene, Oregon 97402
- Able Fab, Inc., P.O. Box 5274, Spokane, Wa. 99205
- American International Forest Products, Inc., P.O. Box 4166, Portland, Oregon 97208
- American River Lbr. Co. Inc., P.O. Box 16010, Portland, Oregon 97216
- Balfour Guthrie Canada Ltd., 740 Nicola St., Vancouver, B. C. V68202
- Barnett Lumber Industries, P.O. Box 34279, Postal Station "D", Vancouver, B. C. Canada VJ6 4P2
- Burns Kneeland Lumber, Aitkin, Minn. 56431
- Capital Building Systems, P.O. Box 830, Huron, South Dakota 57350
- Chandler Corp., P.O. Box 2840, Boise, Idaho 83701
- Chapman Lbr. Co., 813 S. W. Alder St., Portland, Oregon 97205
- Contact Lumber Company, 819 Corbett Building, Portland, Oregon 97204
- Dant & Russell, Inc., P.O. Box 587, North Plains, Oregon 97133
- Figenshow Lumber Company, Inc., Tonasket, Wa. 98855
- Forest Glen Lbr. Co., Box 310, Medford, Oregon 97501
- Gill Forest Products, P.O. Box 651, Bellevue, Mn. 98009
- Glacier Forest Products, P.O. Box 2413, Great Falls, Montana 59404
- Gold Rey Forest Products, Inc. P.O. Box 687, Beaverton, Oregon 97005
- Gray Co., Inc., 1512 St. Paul Ave., Tacoma, Wa. 98421



Hall Lumber Sales, Inc., P.O. Box 97, Middleton, Wisconsin 53562

Inland Lumber Co., P.O. Box 190, Colton, Calif. 92324

International Paper Co., Woodlands Accounts Dept., P.O. Box 579, Longview, Wa. 98632

Matheus Lumber Company, Inc., P.O. Box 019004, 2562 Dexter Avenue North Seattle, Wa. 98109

Midwest Export & Import Co., P.O. Box 6675, Detroit, Michigan 48240

NEPA Wholesale Lumber Sales, P.O. Box 601, Snohomish, Washington 98290

North Pacific Lumber Co., P.O. Box 3915, 1505 S. E. Gideon, Portland, Oregon 97208

Port Barre Lumber Ind. Inc., Port Barre, La., 70577

Newport Int. Forest, Inc., P.O. Box 705, Corona del Mar, Calif., 92625

Oregon Pacific Ind., S. W. Orepac Ave., Wilsonville, Oregon 97070

Potlatch Corp., P.O. Box 25445, Portland, Oregon 97225

Rogue Forest Prod., P.O. Box 1211, Medford, Oregon 97501

Rowles—Westrum Lbr. Co. L.T.D., #2041330—8th St. S. W., Calgary, Alberta, Canada

Sequoia Supply, P.O. Box 98480, Tacoma, Washington 98499

Taiga Wood Products Ltd., P.O. Box 80329, South Burnaby, B.C. Canada

Timberweld Mfg., P.O. Box 66B, Columbus, Montana 59019

Trumark Industries, Terminal Box 3045, Spokane, Wa. 99220

United-Alpine Lumber Co., 4800 S. W. Macadam Avenue —Rm. 305, Portland, Oregon 97201

West Coast Forest Industries, 10550 S.W. Allen Blvd., Beaverton Ore. 97005

Western Empire Forest Products, P.O. Box 5301, Eugene, Oregon 97405

Wood Market, Inc., 840 Crown Plaza Bldg., Portland, Oregon 97201

**EXHIBIT D****LIST OF ALL MATERIAL CONTRACTS  
FOR TIMBER**

U.S. Forest Service, USDA, as Seller, Timber Purchase Contract to Landreth Timber Company, Inc., as Purchaser.

Name of Sale	Expiration Date	App. Volume Balance
(a) Grand	1980	10.3 (Million BF)
(b) Frost	1980	8.3
(c) Pete's Loop	1980	4.5
(d) Cumber	1978	3.7
(e) NOA	1978	1.4
(f) Zipper	1978	.5
		28.7 Million BF

**EXHIBIT E***Lumber Customers*

A & R Lumber Sales, P.O. Box 2803, Eugene, Oregon 97402

Able Fab, Inc., P.O. Box 5274, Spokane, Wa. 99205

American International Forest Products, Inc., P.O. Box 4166, Portland, Oregon 97208

American River Lbr. Co. Inc., P.O. Box 16010, Portland, Oregon 97216

Balfour Guthrie Canada Ltd., 740 Nicola St., Vancouver, B. C. V60202

Barnett Lumber Industries, P.O. Box 34279, Postal Station "D", Vancouver, B. C. Canada VJ6 4P2

Burns Kneeland Lumber, Aitkin, Minn. 56431

Capital Building Systems, P.O. Box 830, Huron, South Dakota 57350

Chandler Corp., P.O. Box 2840, Boise, Idaho 83701

Chapman Lbr. Co., 813 S. W. Alder St., Portland, Oregon 97205

Contact Lumber Company, 819 Corbett Building, Portland, Oregon 97204

Dant & Russell, Inc., P.O. Box 587, North Plains, Oregon 97133

Figenshow Lumber Company, Inc., Tonasket, Wa. 98855

Forest Glen Lbr. Co., Box 310, Medford, Oregon 97501

Gill Forest Products, P.O. Box 651, Bellevue, Wn. 98009

Glacier Forest Products, P.O. Box 2413, Great Falls, Montana 59404

Gold Rey Forest Products, Inc. P.O. Box 687, Beaverton, Oregon 97005

Gray Co., Inc., 1512 St. Paul Ave., Tacoma, Wa. 98421  
 Hall Lumber Sales, Inc., P.O. Box 97, Middleton, Wisconsin 53562  
 Inland Lumber Co., P.O. Box 190, Colton, Calif. 92324  
 International Paper Co., Woodlands Accounts Dept., P.O. Box 579, Longview, Wa. 98632  
 Matheus Lumber Company, Inc., P.O. Box C19004, 2562 Dexter Avenue North, Seattle, Wa. 98109  
 Midwest Export & Import Co., P.O. Box 6675, Detroit, Michigan 48240  
 NEPA Wholesale Lumber Sales, P.O. Box 601, Snohomish, Washington 98290  
 North Pacific Lumber Co., P.O. Box 3915, 1505 S. E. Gideon, Portland, Oregon 97208  
 Port Barre Lumber Ind. Inc., Port Barre, La. 70577  
 Newport Int. Forest, Inc., P.O. Box 705, Corona del Mar, Calif. 92625  
 Oregon Pacific Ind., S. W. Orepac Ave., Wilsonville, Oregon 97070  
 Potlatch Corp., P.O. Box 25445, Portland, Oregon 97225  
 Rogue Forest Prod., P.O. Box 1211, Medford, Oregon 97501  
 Rowles—Westrum Lbr. Co. L.T.D., #2041330—8th St. S. W. Calgary, Alberta, Canada  
 Sequoia Supply, P.O. Box 98480, Tacoma, Washington 98499  
 Taiga Wood Products Ltd., P.O. Box 80329, South Burnaby, B.C. Canada  
 Timberweld Mfg., P.O. Box 66B, Columbus, Montana 59019

Trumark Industries, Terminal Box 3045, Spokane, Wa. 99220  
 United-Alpine Lumber Co., 4800 S. W. Macadam Avenue—Rm. 305, Portland, Oregon 97201  
 West Coast Forest Industries, 10550 S.W. Allen Blvd., Beaverton, Ore. 97005  
 Western Empire Forest Products, P.O. Box 5301, Eugene, Oregon 97405  
 Wood Market, Inc., 840 Crown Plaza Bldg., Portland, Oregon 97201



**EXHIBIT F****CONSULTING AND NONCOMPETITION  
AGREEMENT**

Effective as of November 17, 1977, B&D Company, Inc. (the "Company"), a Delaware corporation, and Ivan K. Landreth (the "Consultant") agree as follows:

1. *Consulting Arrangement.*

1.1. *Consulting Period.* The Company shall employ the Consultant as a consultant to the Company for a period of one (1) year commencing on the date of this Agreement (such period, as it may be extended, the "Consulting Period").

1.2. *Consulting Duties, etc.* The Company shall employ the Consultant (a) to participate in the operation of the timber mill owned by the Company in the first six (6) months of the Consulting Period, and (b) for such purposes as the Company reasonably deems appropriate in the second six (6) months of the Consulting Period; and the Consultant shall devote such time and effort and shall perform such services as are appropriate or necessary to the performance of his duties as a consultant to the Company in connection with such participation and for such purposes.

2. *Compensation.*

2.1. *Compensation During Consulting Period.* The Company shall pay the Consultant monthly at the rate of Two Thousand Five Hundred Dollars (\$2,500) per month for the first six (6) months of the Consulting Period and at the rate of One Thousand Dollars (\$1,000) per month for the second six (6) months of the Consulting Period.

2.2. *Reimbursement of Costs and Expenses.* Consultant will be reimbursed for his reasonable costs and ex-

penses in connection with the performance of services specifically requested by the Company upon reasonable substantiation and approval by the Company of such costs and expenses.

3. *Noncompetition.* At all times during the Consulting Period and for a period of three (3) years after termination of the Consulting Period, the Consultant shall not, directly or indirectly, as an employee of any person or entity (whether or not engaged in business for profit), individual proprietor, partner, stockholder, director, officer, joint venturer, investor, lender or in any other capacity whatever, compete with the business of the Company or any subsidiary of the Company (each such subsidiary, a "Company Subsidiary"). As used in this Agreement, "compete", "competition" or any variation thereof, means engagement or participation of the Consultant in, or his furnishing aid or assistance in connection with, the design, manufacture, distribution, sale, marketing or rendering of products or services of the type and kind designed, manufactured, distributed, sold, marketed or rendered by the Company or any Company Subsidiary in the Consulting Period or in the one-year period preceding the Consulting Period, including, but not limited to, those products or services the Company or any Company Subsidiary, as the case may be, was then in the process of developing or designing for manufacture, sale, marketing or rendering in the States of California, Idaho, Oregon, Washington and Wyoming.

4. *No Solicitation of Employees.* At all times during the Consulting Period and for a period of three (3) years after termination of the Consulting Period, the Consultant shall not, directly or indirectly, or by any act in concert with others, employ, attempt to employ, recruit or otherwise solicit or induce or influence to leave his employment any employee of the Company or any Company Subsidiary for any purpose. The restrictions

described in this Section 4 are applicable in the States of California, Idaho, Oregon, Washington and Wyoming.

5. *No Disclosure of Information.* The Consultant shall not at any time divulge, use, furnish, disclose or make accessible to anyone other than the Company or a Company Subsidiary or their respective directors or officers any knowledge or information with respect to (a) confidential or secret processes, plans, formulas, data (including cost data), machinery, drawings, specifications, manufacturing procedures and techniques, methods, technology, know-how, programs, devices or material relating to the business, products (whether existing or under development), services or activities of the Company or any Company Subsidiary; (b) any confidential or secret engineering, research, development or other original work of the Company or any Company Subsidiary; (c) any other confidential or secret aspects of the business, products or activities of the Company or any Company Subsidiary; or (d) any customer usages and requirements or any customer lists of the Company or any Company Subsidiary. All records, materials and information obtained by the Consultant in the course of his employment by the Company shall be deemed confidential and shall remain the exclusive property of the Company. This provision shall not apply to any information which at any time comes into the public domain other than as a result of the violation of the terms of this Section 5 by the Consultant.

6. *Enforceability.* The Company and the Consultant recognize that any breach by the Consultant of any of his obligations under Sections 3 and 4 would result in irreparable injury and damage to the overall reputation of the Company and to its business and affairs. The Company and the Consultant therefore consider the restrictions contained in Sections 3 and 4 to be reasonable as to the covenants of, and the duties and restrictions imposed on, the Consultant therein, whether in terms of

extent, time or geographic area. However, if any such covenants, duties or restrictions are found by any court having competent jurisdiction to be unreasonable because they are (or any one of them is) too broad, then those covenants, duties or restrictions shall nevertheless remain effective, but shall be considered amended as to extent, time or geographic area (or any one of them, as the case may be) in whatever manner is considered reasonable by such court, and as so amended shall be enforced.

7. *Relief in Case of Breach.* The services to be rendered by the Consultant to the Company in the Consulting Period are unique and extraordinary, which gives them a value peculiar to the Company; and the Company cannot be reasonably or adequately compensated in damages for their loss. Accordingly, any breach by the Consultant of the terms of this Agreement, including, but not limited to, the terms of Sections 3 and 4, will cause the Company irreparable injury and damage. Therefore, the Company shall be entitled, in addition to all other remedies available to it, to injunctive and other available equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, without notice of the Consultant, for the purpose of enforcing this Agreement or any of its terms.

8. *Termination of Employment.* All employment of the Consultant by the Company under this Agreement shall terminate on the earliest to occur of the following dates:

- a ( ) Upon expiration of the Consulting Period.
- (b) Upon the death or disability of the Consultant. For purposes of this Agreement, the Consultant shall be deemed disabled if he has been unable to render the services required to be rendered by him in the Consulting Period for thirty (30) consecutive days.



(c) At the election of the Company, upon thirty (30) days' prior written notice.

9. *Payments Upon Termination.* If all employment of the Consultant by the Company under this Agreement is terminated, the Company shall pay the Consultant the compensation otherwise payable to him under Section 2 through the date of such termination.

10. *Miscellaneous.* This Agreement shall inure to the benefit of and be binding upon the Company and the Consultant and their respective successors, executors, administrators, heirs and permitted assigns; *provided* that the Consultant may not make any assignment of this Agreement or any interest therein, by operation of law or otherwise, without the prior written consent of the Company. This Agreement constitutes the entire agreement between the parties and may not be changed except by a writing duly executed and delivered by the Company and the Consultant in the same manner as this Agreement. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington. The Company and the Consultant may execute this Agreement in any number of counterparts, each of which is an original, but all of which shall constitute but one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart. This Agreement supersedes in all respects any prior agreement between the Company and the Consultant relating to any of the subject matter hereof.

B&D COMPANY, INC.

By \_\_\_\_\_  
SAMUEL S. DENNIS 3d  
Its President

\_\_\_\_\_  
IVAN K. LANDRETH

# EXHIBIT G

## LIST OF PENDING OR THREATENED LITIGATION PROCEEDINGS, CLAIMS OR GOVERNMENTAL INVESTIGATION

None to the best knowledge and belief of the Stockholders, Directors and Officers of Landreth Timber Company, Inc.



## ASSIGNMENT OF, AND AMENDMENT TO, STOCK PURCHASE AGREEMENT

Effective as of November 16, 1977, Ivan K. Landreth, Thomas E. Landreth and Ivan K. Landreth, Jr. (the "Sellers"), Landreth Timber Company, Inc. (the "Company"), Samuel S. Dennis, 3d ("Mr. Dennis"), and B&D Company, Inc. (the "Substituted Buyer") agree as follows:

1. *Background.* The Sellers, the Company and Mr. Dennis (acting solely as an accommodation party for the benefit and on behalf of the Substituted Buyer) are parties to a Stock Purchase Agreement dated October 6, 1977 (the "Stock Purchase Agreement"). The parties to this agreement wish to substitute the Substituted Buyer for Mr. Dennis as "the Buyer" under the Stock Purchase Agreement, to amend certain terms of the Stock Purchase Agreement as set forth below, and to conform all other terms of the Stock Purchase Agreement that are not so amended.

2. *Substitution of Substituted Buyer.* The Substituted Buyer is hereby substituted for Mr. Dennis as "the Buyer" referred to in the Stock Purchase Agreement with the same legal effect as though the Substituted Buyer had been the original party to the Stock Purchase Agreement in the place of Mr. Dennis. Mr. Dennis hereby assigns all of his rights and obligations in, to and under the Stock Purchase Agreement to the Substituted Buyer. The Substituted Buyer hereby accepts the assignment by Mr. Dennis to it of all his rights and obligations in, to and under the Stock Purchase Agreement, and acknowledges that it is fully bound by the terms of the Stock Purchase Agreement as the Buyer referred to in the Stock Purchase Agreement. The parties to this agreement all hereby acknowledge that Mr. Dennis executed the Stock Purchase Agreement as "the Buyer" referred to in the Stock Purchase Agreement

solely as an accommodation party for the benefit and on behalf of the Substituted Buyer, and that he is hereby discharged from any and all obligations under the Stock Purchase Agreement as completely as if he had never been a signatory to the Stock Purchase Agreement.

3. *Representation and Warranty of Mr. Dennis and Substituted Buyer.* Mr. Dennis and the Substituted Buyer hereby jointly and severally represent and warrant to the Sellers and the Company that the Substituted Buyer is validly organized and existing and has all the power and authority necessary and appropriate to carry out and perform its obligations as "the Buyer" under the Stock Purchase Agreement.

4. *Amendment to Paragraph 1.* Paragraph 1 of the Stock Purchase Agreement is hereby amended in its entirety to read as follows:

"1. The Sellers agree to sell and the Buyer agrees to buy said shares for a total price of Three Million Dollars (\$3,000,000) payable as follows:

(a) One Hundred Sixty-five Thousand Dollars (\$165,000) in cash upon the execution and delivery of fully-executed copies of the agreement to the respective parties. Said down payment shall be held in escrow by Rainier National Bank, Seattle, Washington (the "Bank") and, subject to the provisions of Paragraph 4 hereinafter, delivered to the Sellers at the Closing; provided, that upon the request of Ivan K. Landreth, the Bank shall advance to the Company such amounts from said escrow cash as Mr. Landreth requests for use in conducting the business until the Closing. Said amounts shall constitute a non-interest bearing, unsecured demand loan to the Company from the Buyer.

- (b) Seven Hundred Fifty Thousand Dollars (\$750,000) in cash, to be paid at Closing (of which amount Fifty Thousand Dollars (\$50,000) shall be payable to an escrow agent mutually acceptable to the Buyer and the Sellers) as provided in Paragraph 4. A note secured by a first mortgage on certain assets of the Company payable to the Small Business Administration amounting to Two Hundred Fifty-three Thousand Ninety-five Dollars (\$253,095) on August 31, 1977, and notes payable to banks secured by a second mortgage on certain property of the Company or by personal collateral of Ivan K. Landreth in the total principal amount of One Hundred Fifty Thousand Dollars (\$150,000) shall be caused to be paid by the Buyer at the Closing. An irrevocable written commitment of Rainier National Bank addressed to the Buyer to pay the cash balance due the Sellers on January 10, 1978. Said commitment shall be subject to the provisions of this Agreement and in a form satisfactory to counsel for said banks and counsel for the Sellers.
- (c) The Sellers shall at the Closing deliver the shares of the Company to be sold under this Agreement to the Buyer, properly endorsed for transfer with signatures guaranteed.
- (d) The balance of the total purchase price of Three Million Dollars (\$3,000,000) in the amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) shall be paid in cash on January 10, 1978 without interest (of which amount One Hundred Thousand Dollars (\$100,000) shall be payable to an escrow agent mutually acceptable to the Buyer and the Sellers).

The Sellers agree that Fifty Thousand Dollars (\$50,000) of the Seven Hundred Fifty Thousand Dollars (\$750,000) to be paid at the Closing, and One Hundred Thousand Dollars (\$100,000) of the Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) to be paid on January 10, 1978, pursuant to subparagraphs (b) and (d) of this Paragraph 1, respectively, shall be paid over to an escrow agent mutually acceptable to the Buyer and the Sellers for a period of two (2) years as security for the accuracy of the representations and warranties, and the performance of the covenants, of the Sellers and the Company in this Agreement, all pursuant to an escrow agreement to be satisfactory in form and substance to the Sellers, the Company, the Buyer and such escrow agent."

5. *Amendment to Paragraph 2.* Paragraph 2 of the Stock Purchase Agreement is hereby amended to add after subparagraph (p) thereof the following additional subparagraphs (q), (r) and (s):

"(q) The contracts of the Company with the Small Business Administration are fully transferable and assignable to the Buyer.

"(r) The Company shall have actively and continuously engaged in the milling, manufacture and marketing of lumber and other forest products at all times during the five-year period immediately prior to the Closing Date.

"(s) The financial information relating to the Company set forth in *Exhibit H* attached to this Agreement is complete and correct as of the date of such *Exhibit H*."

6. *Amendment to Paragraph 4.* Paragraph 4 of the Stock Purchase Agreement is hereby amended to revise subparagraph (c) thereof to read as follows:



"(c) At the Closing, the Buyer shall or cause to be delivered to the Sellers the following:

- (1) Seven Hundred Thousand Dollars (\$750,000) cash (of which amount Fifty Thousand Dollars (\$50,000) shall be payable to an escrow agent mutually acceptable to the Buyer and the Sellers).
- (2) A letter of commitment from Rainier National Bank to Sellers as provided in Paragraph 1(b)."

7. *Amendment to Paragraph 7.* Paragraph 7 of the Stock Purchase Agreement is hereby amended to delete subparagraph (d) and to insert in its place a new subparagraph (d) as follows:

"(d) The warranties and representations of the parties shall survive the Closing. Except for all warranties and representations of the Company and the Sellers which relate to federal and state tax liabilities and stock issuance and ownership, said survival shall be limited to two (2) years from the date of Closing."

8. *Cooperation, etc.* The Sellers hereby covenant to the Substituted Buyer that they will cooperate with the Substituted Buyer on a basis mutually satisfactory to the Sellers and the Substituted Buyer in order to enable the Substituted Buyer (a) to obtain necessary financing in connection with the start-up operations of the Maximill being constructed by the Company, and (b) to build up the values of the inventory and accounts receivable of the Company.

9. *Confirmation of Terms.* The Company, the Sellers and the Substituted Buyer hereby confirm all of the terms of the Stock Purchase Agreement that are not amended by this agreement, all of which unamended terms shall be deemed incorporated by reference in this

agreement as fully as if they were set forth in their entirety herein.

EXECUTED under seal in duplicate this November 16, 1977.

Agreed to and Accepted:

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
B&D COMPANY, INC.

By /s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
President

LANDRETH TIMBER COMPANY, INC.

By /s/ Ivan K. Landreth  
IVAN K. LANDRETH  
President

/s/ IVAN K. LANDRETH  
IVAN K. LANDRETH

/s/ IVAN K. LANDRETH  
IVAN K. LANDRETH  
as Attorney-in-Fact  
for Thomas E. Landreth and  
Ivan K. Landreth, Jr.



EDITOR'S NOTE

PAGES 270 thru 274 WERE POOR  
HARD COPY AT THE TIME OF FILMING.  
IF AND WHEN A BETTER COPY CAN BE  
OBTAINED, A NEW FICHE WILL BE  
ISSUED.

## EXHIBIT H

LANDRETH TIMBER COMPANY, INC.  
A Washington State Corporation

## Balance Sheet

(Unaudited)

November 16, 1977

## ASSETS

## Current Assets

Cash in bank (per Mrs. Burse)	4,400
Accounts receivable (per Mr. Landreth)	2,500
Provision for Federal income tax refund (same as 9/30/77)	53,636
Inventories, per Mr. Landreth, at fair market value	201,533
Timber stumpage deposits	<u>14,371</u>
Total current assets	<u>278,440</u>

## Property, Mill and Equipment, at cost less accumulated depreciation

Equipment and Buildings at 9/30/77	1,007,352
Additions: Capital expenditure in Oct. 1977 (per Mr. Landreth's schedule)	60,642
Capital expenditure 11/1/77-11/16/77 (per Mr. Landreth's schedule)	82,793
Capital expenditure 11/17/77 thru mill completion (per Mr. Landreth's schedule)	<u>136,789*</u>
	280,224
Less: Unexpended fire proceeds 9/30/77	(76,025)
Reconciling item for small items	<u>(8,617)</u>
Mr. Landreth's project estimate, less \$700,000 insurance proceeds	<u>195,582</u>
	<u>195,582</u>
	1,302,934
Less: Accumulated depreciation at 9/30/77	592,403
Approximate depreciation for Oct./Nov. 1977 (same as for July/Aug. 1977):	
Balance 8/31/77	536,783
Balance 6/30/77	<u>579,543</u>
	<u>11,240</u>
	(603,643)
	599,291
Land at cost	<u>5,000</u>
	<u>604,291</u>

## Other Assets

Goodwill	<u>1,000</u>
	<u>9,833,733</u>

## Exhibit H (Continued)

LANDRETH TIMBER COMPANY, INC.  
A Washington State Corporation

## Balance Sheet

(Unaudited)

November 16, 1977

## LIABILITIES AND STOCKHOLDERS' EQUITY

## Current Liabilities

Accounts payable, general (per Mr. Landreth)	3,300
Note payable to bank, second mortgage on mill	130,000
Note payable to Mr. S. S. Dennis Jr	150,000
Note payable to bank	30,000
Accrued expenses (per Mr. Landreth):	
- loan interest	3,269
- equipment and buildings (per attached schedule)	136,789*
- balance of wages payable 11/18/77	4,000
- tax and withholding	<u>7,000</u>
	131,058
Current portion of long-term loan	<u>30,000</u>
Total current liabilities	<u>504,358</u>

## Long-Term Loan

Plant and equipment collateral loan, 90% guaranteed by SBA due in \$5,400 monthly installments including 9-1/2% interest	247,969
Less: Current portion above	<u>30,000</u>
	197,969

## Stockholders' Equity

Common Stock - par value \$100 - authorized 1,000 shares	
- issued and outstanding 500 shares	<u>50,000</u>
Retained earnings balance 9/30/77	235,231
Balancing figure, representing approximate loss for 10/1/77 through 11/16/77	<u>(74,025)**</u>
	<u>160,179</u>
	<u>181,206</u>
	<u>\$ 833,733</u>

\* Includes \$14,000 capitalized wages payable on 11/18/77.

\*\* This \$74,025 represents losses in the ordinary course of business per Ivan Landreth

NOTE: It is recognized that the current liabilities less the current assets on this balance sheet, amounting to \$226,118 (\$504,358 less \$278,440), may vary by plus or minus \$3,000.

Attachment to Exhibit H

(November 16, 1977)

LANDRETH TIMBER COMPANY, INC.Capital Expenditure Amounts Paid October 1977  
(per Mr. Landreth)

18,127	Electrical Equipment
145	Miscellaneous
1,875	Saws Helle Blades
500	Freight
160	Supplies
60	Supplies
804	Supplies
718	Supplies
4,938	Stack Steel - Maxi Mill
942	Oxygen Rods
685	Electric Items
19,100	Washington Sales - Sawmill Equipment Resaw
5,797	Nicholson Manufacturing
<u>6,791</u>	Pacific Saw Knife - Grinding
<u>\$60,642</u>	

November 15, 1977

Attachment to Exhibit H

Memo to: Mr. S. S. Dennis III

From: Peter Townsend

Subject: Notes of discussions with Mr. Ivan Landreth on 11/15/77.

1. Mr. Landreth indicated that the advance of \$130,000 made in October 1977 to the corporation from Mr. S. S. Dennis III was used approximately as follows:

Pay off Mr. Landreth's \$20,000 note plus interest	23,000
Capital Expenditures:	
Warren and Brewster - 2 months engineering fees	17,040
Warren and Brewster - Maxi Mill progress payment	48,000
Stack Steel	9,998
Consolidated Electric - wiring	4,342
Wells and Wade - hardware	806
Bearings Incorporated	407
Transport Clearings	319
Milca	1,292
Welder rent	250
Small items	<u>341</u>
Payroll, operating expenses, quarterly payroll taxes, etc.	<u>44,207</u>
	<u>\$ 130,000</u>



2. Mr. Landreth gave the following estimated capital expenditure figure for the completed mill:

## A) ITEMS PAID THRU 11/15/77:

General ledger postings thru 11/15/77 (cash paid)	676,000
Extra items in Para 1 above	<u>82,792</u>
	\$ <u>758,792</u>

## B) ITEMS TO BE PAID AFTER 11/15/77:

Warren and Brewster - Main Mill	72,514
Machinery Sales Company	10,400
Georgia Pacific Supply Co.	<u>3,305</u>
	86,219
3.3% Sales tax on \$86,219	<u>4,570</u>
	90,789

Warren and Brewster-Plant Engineering Contract	* 17,000
2 weeks labor thru 11/15/77	14,000
2 weeks labor thru 11/30/77	5,000
Contingencies	<u>10,000</u>
Total Payable after 11/15/77	\$ <u>136,789</u>
MR. LANDRETH'S GRAND TOTAL PROJECT ESTIMATE	\$ <u>895,582</u>

(This compares with his 9/30/77 total estimate of \$864,632.)

D-274174  
NUMBER

[SEAL]

DOMESTIC

STATE OF WASHINGTON  
DEPARTMENT OF STATE

BRUCE K. CHAPMAN, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF MERGER

LANDRETH TIMBER COMPANY, INC. domestic corporation of Tonasket, Washington (Merged with B&D COMPANY, Inc. (Delaware corp. not qualified in Washington)), was filed for record in this office at 8:00 o'clock a.m., on this date, and further certify that such Articles remain on file in this office.

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol, November 29, 1977.

/s/ Bruce K. Chapman  
BRUCE K. CHAPMAN  
Secretary of State

ARTICLES OF MERGER  
of  
LANDRETH TIMBER COMPANY, INC.  
(a Washington corporation)  
into  
B&D COMPANY, INC.  
(a Delaware corporation)

[Filed Nov. 29, 1977]

Pursuant to the provisions of Section 23A.20.050 of the Revised Statutes of Washington, as amended, B&D COMPANY, INC (the "Parent"), a corporation organized under the laws of the State of Delaware and owning all of the outstanding shares of LANDRETH TIMBER COMPANY, INC. (the "Subsidiary"), a corporation organized under the laws of the State of Washington, hereby executes the following Articles of Merger:

1. The adoption by the Parent of the Agreement and Plan of Merger attached to these Articles of Merger as *Exhibit A* (the "Agreement and Plan of Merger") was approved by resolutions of the Board of Directors of the Parent adopted November 11, 1977.

2. The number of outstanding shares of the only class of the Subsidiary's authorized capital stock and the number of shares of that class owned by the Parent (the surviving corporation following the merger contemplated by the Agreement and Plan of Merger) is:

Class	Number of Shares Outstanding	Number of Shares Owned by Parent
Common Stock, \$100 par value	500	500

3. The mailing of the Agreement and Plan of Merger was waived by the Parent as the sole stockholder of the Subsidiary.

4. The laws of the State of Delaware, under which the Parent is organized, permit the merger contemplated by the Agreement and Plan of Merger.

5. Simultaneously with the filing of these Articles of Merger the Parent has caused to be filed with the Secretary of State of Washington the documents required by Section 20.070 of the Business Corporation Act of Washington regarding its transaction of business in Washington as a foreign corporation.

6. The Parent hereby (a) agrees that it may be served with process in the State of Washington in any proceeding for the enforcement of any obligation of the Subsidiary and in any proceeding for the enforcement of the rights of a dissenting shareholder of the Subsidiary against the Parent; (b) appoints the Secretary of State of Washington as its agent to accept service of process in any such proceeding; and (c) agrees that it will promptly pay to the dissenting shareholders of such domestic corporation the amount, if any, to which they shall be entitled under the provisions of the Washington Business Corporation Act with respect to the rights of dissenting shareholders.

IN WITNESS WHEREOF, the Parent has caused two duplicate originals of these Articles of Merger to be executed in its name by its President and Secretary, this 17th day of November, 1977.

B&D COMPANY, INC.

By /s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
President

By /s/ Ruth A. Weymouth  
RUTH A. WEYMOUTH  
Assistant Secretary

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF KING )

Before me, JACK G. STROTHER, Notary Public in and for the said County and State, personally appeared Samuel S. Dennis 3d, who acknowledged before me that he is the President of B&D COMPANY, INC., a Delaware corporation, and that he signed the foregoing document as his free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and seal, this 17th day of November, 1977.

My commission expires September 10, 1981.

/s/ Jack G. Strother  
 Notary Public

# EXHIBIT A

## AGREEMENT AND PLAN OF MERGER

of

LANDRETH TIMBER COMPANY, INC.  
 (a Washington corporation)

into

B&D COMPANY, INC.  
 (a Delaware corporation)

AGREEMENT OF MERGER, dated November 17, 1977, between B&D COMPANY, INC. (the "Parent" and, after the merger referred to below, the "Surviving Corporation"), a Delaware corporation, and LANDRETH TIMBER COMPANY, INC. (the "Subsidiary"), a Washington corporation.

## WITNESSETH:

WHEREAS, the board of directors of each of the Parent and the Subsidiary, to the end that greater efficiency and economy in the business now separately carried on by each of these corporations may be accomplished, deem it advisable and to the benefit of each of these corporations and their respective stockholders that the Subsidiary be merged into and with the Parent;

WHEREAS, the Parent, by its certificate of incorporation filed in the office of the Secretary of State of Delaware on November 4, 1977, and submitted for recordation in the office of the Recorder of Deeds for the County of New Castle of the State of Delaware on November 4, 1977, has an authorized capital stock consisting of One Hundred Thousand (100,000) shares of Class A Common Stock, \$2.00 par value, and Twenty-Five Thousand (25,000) shares of Class B Common Stock, \$.40 par value, of which stock Eighty-Five Thousand (85,000) shares of Class A Common Stock and



Fifteen Thousand (15,000) shares of Class B Common Stock are now issued and outstanding and such shares shall remain issued and outstanding;

WHEREAS, the Subsidiary, by its articles of incorporation which were filed in the office of the Secretary of State of Washington on October 25, 1955, has an authorized capital stock consisting of a single class of One Thousand (1,000) shares of common stock, \$100 par value, of which stock Five Hundred (500) shares are now issued, outstanding and owned by the Parent; and

WHEREAS, the registered office of the Parent in the State of Delaware is located at 100 West Tenth Street in the City of Wilmington, County of New Castle, and the name of its registered agent at such address is The Corporation Trust Company; and the principal office of the Subsidiary in the State of Washington, is located at City of Tonasket, County of Okanogan,

NOW, THEREFORE, the Parent and the Subsidiary agree that the Subsidiary be merged into and with the Parent, and agree that the terms and conditions of the merger, and the mode of carrying it into effect be as follows:

#### ARTICLE I. CERTIFICATE OF INCORPORATION

Article FIRST of the Parent's Certificate of Incorporation will be amended upon consummation of the merger to read as follows: "The name of the Corporation is Landreth Timber Company, Inc." The Parent's Certificate of Incorporation as thus amended and otherwise as in effect on the effective date of the merger will continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation.

#### ARTICLE II. BY-LAWS.

The by-laws of the Parent as in effect on the effective date of the merger shall be and remain the by-laws of the Surviving Corporation until they are altered, amended or repealed as therein provided.

#### ARTICLE III. PRINCIPAL OFFICES.

The principal offices of the Surviving Corporation are and shall be located (a) in the State of Washington, at , in the City of Tonasket, County of Okanogan, and (b) in the State of Delaware, at 100 West Tenth Street, City of Wilmington, County of New Castle.

#### ARTICLE IV. BOARD OF DIRECTORS: OFFICERS.

The board of directors of the Surviving Corporation on the effective date of the merger shall consist of the following persons (presently the directors of the Parent), who shall serve until their respective successors are elected or appointed according to the by-laws:

Name	Address
John Bolten, Sr.	Standex International Corporation Manor Parkway Salem, N.H. 03079
Samuel S. Dennis, 3d	52 Essex Road Chestnut Hill, MA 02167

The officers of the Surviving Corporation on the effective date of the merger shall consist of the following persons (presently the officers of the Parent) who shall serve until their successors are elected or appointed according to the by-laws:

Office	Name	Address
Chairman of the Board	John Bolten, Sr.	Standex International Corporation Manor Parkway Salem, N.H. 03079
President and Treasurer	Samuel S. Dennis 3d	52 Essex Road Chestnut Hill MA 02167
Secretary	Jack G. Strother, Esq.	
Assistant Secretary	Ruth A. Weymouth	75 Elmwood Park #24 Wollaston, MA 02170

# ARTICLE V. NO CONVERSION OF SHARES OF THE SUBSIDIARY; OUTSTANDING SHARES OF THE SURVIVING CORPORATION

On the date of the merger, all of the issued shares of the Subsidiary will be surrendered and cancelled, and there will be no conversion of any shares of the Subsidiary into shares of the Surviving Corporation. On the date of the merger, the total number of issued and outstanding shares of common stock of the Surviving Corporation will remain Eighty-Five Thousand (85,000) shares of Class A Common Stock and Fifteen Thousand (15,000) shares of Class B Common Stock.

# ARTICLE VI. TERMS AND CONDITIONS OF MERGER.

On the effective date of the merger, the Parent, as the Surviving Corporation, in addition to the assets and rights it itself possesses, will be possessed of all the property, rights, privileges, powers, franchises, patents, trademarks, licenses, registrations and other assets of every kind and description of the Subsidiary; and the full right to all such assets will be vested in the Surviving Corporation without its further act or deed and they will be its property as they were of the Subsidiary, and the title to any real estate, whether by deed or otherwise, now vested in the Subsidiary, will not revert or be in any way impaired by reason of this merger. On the effective date of the merger, the Surviving Corporation will be subject to all disabilities and restrictions applicable to the Subsidiary, and all rights of creditors, and all mortgages and other liens upon the property, of the Subsidiary, will be preserved unimpaired, and all debts, liabilities and duties of the Subsidiary will attach to the Surviving Corporation and be enforceable against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

# ARTICLE VII. EFFECTIVE DATE.

The merger will become effective upon the filing of this Agreement and Plan of Merger and all other documents required by law to be filed in connection herewith with the Secretaries of State of Washington and Delaware.

# ARTICLE VIII. TERMINATION OR ABANDONMENT.

Anything herein or elsewhere to the contrary notwithstanding, this Agreement and Plan of Merger may be terminated and abandoned by the board of directors of either the Parent or the Subsidiary at any time prior to the date of the filings contemplated by Article VII.

IN WITNESS WHEREOF, the undersigned, thereunto duly authorized, have hereto signed their names and affixed the seals of the Parent and the Subsidiary, this 17th day of November, 1977.

[CORPORATE SEAL]

B&D COMPANY, INC.

By /s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
President

ATTEST:

/s/ Ruth A. Weymouth  
RUTH A. WEYMOUTH  
Assistant Secretary

[CORPORATE SEAL]

LANDRETH TIMBER COMPANY, INC.

By /s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
President

ATTEST:

/s/ Ruth A. Weymouth  
RUTH A. WEYMOUTH  
Assistant Secretary

[CORPORATE SEAL]

RESIGNATION OF OFFICERS  
OF  
LANDRETH TIMBER COMPANY, INC.

The undersigned Officers as herein designated to wit:

President                   IVAN K. LANDRETH

Vice-President           LUCILLE LANDRETH

Secretary-Treasurer   LUCILLE LANDRETH

do each hereby resign their respective office in LANDRETH TIMBER COMPANY, INC., as above designated effective November 17, 1977.

/s/ Ivan K. Landreth  
IVAN LANDRETH

/s/ Lucille Landreth  
LUCILLE LANDRETH

RESIGNATION OF DIRECTORS  
OF  
LANDRETH TIMBER COMPANY, INC.

The undersigned, each being a Director of LANDRETH TIMBER COMPANY, INC., and constituting the entire present Board of Directors do each hereby resign as such Director effective November 17, 1977.

/s/ Ivan K. Landreth  
IVAN K. LANDRETH

/s/ Lucille Landreth  
LUCILLE LANDRETH

/s/ Thomas Edward Landreth  
THOMAS EDWARD LANDRETH



HALE AND DORR  
Counsellors at Law  
28 State Street  
Boston, Massachusetts 02109

November 4, 1977

Mr. Jack P. Branch  
Timber West, Inc.  
300 120th Street, N. E.  
Bellevue, Washington 98004

Re: *Landreth Timber Company, Inc.*

Dear Mr. Branch:

Sam Dennis has asked me to send to you, and I enclose herewith, Class B Common stock certificates of B & D Company, Inc. (the "Company") issued to the following persons:

Name	Number	Shares
Jack P. Branch	B-1	3,600
Troy N. Beaver	B-3	2,600
Troy N. Beaver, Jr.	B-4	2,600
Robert E. Branch	B-5	2,600

The stock certificates are legended to reflect certain provisions of the Company's Certificate of Incorporation and By-Laws, a copy of which provisions is enclosed for each investor.

As you know, the Rainier Bank and The First National Bank of Boston will require all the above stock certificates to be delivered to them at the closing, together with stock powers in the form enclosed and further stock powers in the Company's new name, Landreth Timber Company, Inc., which are also enclosed.

Would you please circulate to each of the other Class B stockholders listed above the package with his name on

it enclosed herein, consisting of his stock certificate, extracts from the charter and by-laws, both his stock transfer powers, and a copy of this letter. At the closing we will need to receive back from each person the stock certificate and both signed stock transfer powers.

Also, would you and each of the other persons sign and return one counterpart of this letter in order to acknowledge receipt hereof.

Thank you for your assistance in this matter.

Sincerely yours,

/s/ Edward Young  
EDWARD YOUNG

Enclosures

The undersigned hereby  
acknowledges receipt of  
this letter and the en-  
closures referred to above:

/s/ Jack P. Branch  
JACK P. BRANCH

/s/ Troy N. Beaver  
TROY N. BEAVER

/s/ Troy N. Beaver, Jr.  
TROY N. BEAVER, JR.

/s/ Robert E. Branch  
ROBERT E. BRANCH

# ASSIGNMENT AND ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION

Pursuant to Section 3(b) of a Stock Purchase Agreement dated October 6, 1977 by and among Ivan K. Landreth, Thomas E. Landreth, Ivan K. Landreth, Jr., Landreth Timber Company, Inc. and Samuel S. Dennis 3d, said Samuel S. Dennis 3d hereby certifies that he has taken all steps contemplated in and required by said Section 3(b) to organize the corporation referred to in said Section 3(b) for whose use, benefit and advantage and on whose behalf said Samuel S. Dennis 3d entered into the said Stock Purchase Agreement solely as an accommodation party. Therefore, as contemplated and required by said Section 3(b), Samuel S. Dennis 3d hereby assigns to B & D Company, Inc., a Delaware corporation, all of his rights and obligations in, to and under the said Stock Purchase Agreement, with the effect set forth in said Section 3(b).

Executed as a sealed instrument as of this 7th day of November, 1977.

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D

The undersigned B & D. Company, Inc. hereby represents and warrants to the several parties to the Stock Purchase Agreement that, as contemplated by said Section 3(b), it is validly organized and existing and has all the power and authority necessary to carry out and perform the Stock Purchase Agreement.

The undersigned hereby accepts the assignment by Samuel S. Dennis 3d set forth above of all his rights and obligations in, to and under the Stock Purchase Agreement. The undersigned expressly assumes all such obligations of Samuel S. Dennis 3d and by this instrument agrees to be substituted as the Buyer (as that term is defined in the Stock Purchase Agreement) with the same legal effect as

though the undersigned and not Samuel S. Dennis 3d had been the original party to the Stock Purchase Agreement.

Executed as a sealed instrument as of this 1st day of November, 1977.

B & D. COMPANY, INC.

By /s/ John Bolten, Sr.  
JOHN BOLTEN, SR.  
Chairman of the Board

## Attachment D

## LANDRETH TIMBER COMPANY, INC.

*Action of Sole Director*

The undersigned, being the sole Director of LANDRETH TIMBER COMPANY, INC., a Washington corporation, and acting in accordance with Sections 08.345, 20.050 and 20.070 of the Business Corporation Act of the State of Washington hereby adopts the following resolutions:

RESOLVED, that the following persons be and hereby are elected to the respective offices set forth opposite their names below, to serve until their respective successors are duly elected and qualified or until their prior resignation or removal:

Chairman of the Board:	John Bolten, Sr.
President:	Samuel S. Dennis 3d
Treasurer:	Samuel S. Dennis 3d
Secretary:	Jack G. Strother
Assistant Secretary:	Ruth A. Weymouth

RESOLVED, that LANDRETH TIMBER COMPANY, INC. (the "Company") enter into an Agreement and Plan of Merger in the form attached hereto as *Exhibit A* (the "Agreement and Plan of Merger"), and that the President of the Company is authorized to execute and deliver the Agreement and Plan of Merger in the name and on behalf of the Company and under its corporate seal;

RESOLVED, that upon the terms and conditions, and in the mode, set forth in the Agreement and Plan of Merger, the Company merge itself into its sole stockholder, B & D COMPANY, INC., a Delaware corporation; and

RESOLVED, that the President and Assistant Secretary of the Company are directed to execute Articles of Merger in the form attached hereto as *Exhibit B* (the "Articles of Merger"), respecting the merger of the Company into B & D COMPANY, INC., and to cause the Articles of Merger to be filed with the Secretary of State of Washington, and to do all such acts and things as any of them may deem necessary or desirable to effect such merger.

RESOLVED, that the Merger shall be effected upon the later of the date of filing of the Articles of Merger with the Secretary of State of Washington and the date of filing by B & D Company, Inc. of a Certificate of Ownership and Merger with the Secretary of State of Delaware.

RESOLVED, that this corporation adopt and hereby does adopt, in connection with the merger, the plan for the distribution of all the assets of this corporation to B&D Company, Inc. which is set forth as Article VI of the Agreement and Plan of Merger; it being the intention of this corporation that such Article VI constitute a plan of liquidation within the meaning of Section 334(b)(2)(A) of the Internal Revenue Code of 1954, as amended.

WITNESS my hand and seal this — day of November, 1977.

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
Sole Director



Attachment E  
TIMBER WEST, INC.

October 20, 1977

Mr. Samuel S. Dennis, 3rd  
Hale and Dorr  
Counselors at Law  
28 State Street  
Boston, Mass.

Re: General Manager

Dear Sam:

I narrowed the search down to three people:

- 1) Rod Black
- 2) Phil Cook
- 3 Virgil Clark

All three of these people's resumes are attached.

I feel Rod Black is the number one choice on the basis of experience and over-all General Manager capabilities. He has been in the mill business and is very familiar with it and has the best total P & L responsibility. He is strong in sales and though not totally experienced in maxi-mills or computer mills, he has operated the sophisticated electronics incorporated in this type of mill. I would expect a \$40,000 approximate salary with some reasonable bonus arrangement. I personally would expect this to equate to probably \$10,000. He has 25 years in the business and would be my number one choice. However, in his position, he requests 30 days to terminate and this could potentially cause a mild problem with Ivan although I do believe he will accommodate us accordingly.

Next, my second recommendation is Mr. Phil Cook of Afton, Wyoming who is ready to go to work immediately and after a check of his references, I am confident he could do our job.

He has good P & L experience and responsibilities and I frankly would be very comfortable with him in our General Manager position. His anticipated salary would be in the approximate area of \$35,000 with some bonus arrangement. I feel this is in keeping with the industry standards and what we will have to pay as the going rate.

My number three recommendation would be Mr. Virgil L. Clark, who is currently a forest manager consultant while liquidating a corporation and has had extensive mill background, but I feel his age (64) would be not in keeping with our over-all picture and yet I would not want this to deter from his over-all qualifications. In fact, he may well be over-qualified, but nevertheless, a good candidate.

I would like to have your response to these three people and if you will call me at your convenience, I would appreciate it.

Respectfully your,

TIMBER WEST, INC.  
/s/ Jack P. Branch  
JACK P. BRANCH  
President

JPB:jmk  
Enc.

cc: 175 Washington Street  
Duxbury, Mass. 02332  
cc: Al Willard  
cc: Bob Ingram

## TIMBER WEST, INC.

October 27, 1977

Mr. Ivan Landreth  
Landreth Timber Company, Inc.  
Tonasket, WA 98855

Re: Mill General Manager

Dear Ivan:

After a very careful and deligent (sic) search, we have found what we consider a very capable General Manager to act on our behalf at the mill after closure. This gentleman is Mr. Phil Cook who will personally deliver this letter to you and since you gentlemen already know each other, this is more or less our informal introduction of Phil to you as our General Manager.

Phil's recommendations have come extremely high and he also had a very responsive visit with Bob Ingram at Rainier Bank and Bob's appraisal was equally good. I had Phil talk to Mr. Sam Dennis yesterday and it was after this discussion and my own personal recommendations that it was mutually agreed Phil Cook would be our man.

I would appreciate your extending all courtesies to Phil in any interim meetings that you will have with him prior to our formal take over on our closing date of November 4th.

After our conversation this morning, I do concur with you a two-day meeting this Saturday and Sunday in private will allow you to take Phil through the full mill situation and we would appreciate as thorough a job as is possible within that limited time.

As per our schedule generally agreed upon this morning by phone, we would expect to fly into Tonasket on Saturday, November 5th to meet with you at the airport in

Omak approximately 9:00 A.M. We would drive to the mill and meet with Phil, yourself and George for perhaps two hours in a top level meeting and acknowledge the transition to George at this point.

If it is permissable, and I feel this is very important, I would like to request that you invite all of the key people to a luncheon at the restaurant we had lunch in on our visit and reserve a meeting room or luncheon room if possible. We would then introduce Mr. Dennis, Phil Cook, and myself, and re-assure all parties that there will be no changes. At this meeting, we would anticipate making some salary adjustments as per our conversation, but we will discuss this and other matters with Mr. Dennis next week at the preliminary closing.

Ivan, I would like to take this time to give you my personal thanks for your cooperation in all of the very difficult matters that have arisen within this past three months. You have handled yourself with appropriate dignity and your confidence and general appreciation for the situation has been clearly appreciated. I would also like to compliment you on being a true gentleman and man of your word and I certainly appreciate all of these and many other efforts you have extended to me, Gene Graf, and Mr. Sam Dennis. We do not expect this to be our last association and look forward to a pleasant transition and years of pleasant relationship together.

Respectfully yours,

TIMBER WEST, INC.  
/s/ Jack P. Branch  
JACK P. BRANCH  
President

JPB:jmk

cc: Sam Dennis  
John Bolten  
Phil Cook

## LANDRETH TIMBER COMPANY, INC.

*Certificate of President*

The undersigned certifies that he is the duly-elected and qualified President of Landreth Timber Company, Inc., and pursuant to a written consent of all of the Directors of Landreth Timber Company, Inc., dated as of November 17, 1977, the following resolution was adopted by Landreth Timber Company, Inc.

**RESOLVED:** That Philip A. Cook, as General Manager of the Company's operations, is hereby designated and authorized as the Company's representative to deal with the United States Forest Service and to execute all documents in connection with timber cutting contracts and any and all matters between the Forest Service and the Company.

IN WITNESS WHEREOF, the undersigned has set his hand this November 17, 1977.

/s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D

## Attachment E-1

## TIMBER WEST, INC.

December 19, 1977

Mr. Phil Cook  
General Manager  
Landreth Timber Company  
Tonasket, WA 98855

Re: Stock purchase Landreth Timber Company

Dear Phil:

I would like to take this letter to clarify the situation with respect to Ivan Landreth's position and situation with the company at this time.

Ivan Landreth and his sons have sold 100% of the stock of Landreth Timber Company to B & D Corporation which subsequently will change its name back to Landreth Timber Company. Ivan Landreth has no stock whatsoever in the company and has been retained on an interim basis for perhaps one to three months as a consultant on matters relating to the orderly transition in sales, contracts, customers, etc. In the event any of your personnel have any vague notions or concerns as to whether Ivan is still involved in the company, please be sure that he is not and although he is still around the mill, more or less tidying up his affairs, we will have no further use for his services in a short period of time.

The principal stock holders are Sam Dennis and John Bolton of Boston, Massachusetts and my group is a minority holder.



Should you have the need to show this letter to any interested party, please feel free to do so.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack P. Branch  
JACK P. BRANCH  
President

JPB:jmk  
cc: Sam Dennis  
John Bolton

November 17, 1977

Supervisor  
Colville National Forest  
Forest Service U.S.D.A.  
Colville, Washington 99114

Dear Sir:

This will introduce Mr. Philip A. Cook, who is the new General Manager of all operations at Landreth Timber Company, Inc. A small group of individuals, of whom the undersigned is controlling stockholder, has acquired Landreth Timber Company, Inc., effective November 17, 1977. We plan to operate the mill on a full-time basis, year-round, and will, of course, perform all contracts with the U.S. Forest Service in accordance with their terms. With the exception of Mr. Cook, we anticipate continuing the operation with the same supervisory personnel as in the past.

If you would like further information about the new owners, Mr. Thomas Wood at the Rainier National Bank, Seattle, would be glad to hear from you. (His telephone number is 621-5412.) Mr. Cook can arrange to get any other information you would like to have.

We look forward to working with the Forest Service in the future, and will much appreciate any cooperation you can give to us.

Respectfully,

LANDRETH TIMBER COMPANY, INC.

By /s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
President

## Attachment F

GRAHAM & DUNN  
Attorneys at Law

March 3, 1978

Mr. Ivan K. Landreth  
Oroville, Washington 98844

Dear Mr. Landreth:

This letter follows up your letter of January 16, 1978, enclosing your check no. 125 payable to Landreth Timber Co. Inc., dated January 14, 1978, in the amount of \$369.81 covering credit card charges on the Company Chevron credit card, which were charged by you after the closing of the sale of the Company's stock. We have been instructed by our client to return your check to you pending the resolution of all outstanding claims in connection with the purchase of the mill. For your information, the Chevron statement covering your charges has been paid by the Company.

Very truly yours,

JACK G. STROTHER

JGS/1fb

cc: Samuel S. Dennis, 3d  
Edward T. Engst

Box 487  
Oroville, Wash 98844

Jan. 16, 1978  
- Jack Strother

I am sending herein check for gas purchased made by me on Landreth Timber Co. Inc. Standard credit card. At the time charges there I didn't know my service would be terminated.

Before leaving on our trip I had made arrangements with Vivian in the office that any charges I made before November 1st were for company account and any charges made after that were for my account. I have a payroll deduction from my wages. There are no charge tickets included in company acct and one check dated 5/23/78 - that

is a company which  
this charge is made on  
123/77 and Standard Oil  
is never billed is, but  
no doubt will in May.

8. The \$185.67 ticket dated 11/17  
for snow tires is included  
in the check. They were  
purchased after the mill  
closing and were needed  
to negotiate the mountain.  
as you will recall  
it was snowing in Seattle  
and a blizzard on the pass.

I tried to give this  
check to Phil Cook this  
morning and he refused  
to accept it. I can't  
understand what is  
taking place!

On my termination I  
relinquished my credit card  
and office key to Phil Cook,  
also at that time I found

that my own desk had  
been completely emptied  
out and had been removed  
from the office building.  
Some of my personal property  
has been returned to me  
long with the desk, but  
I did not receive the  
contents of one desk drawer  
which contained personal  
valuable papers.

I have asked Phil for  
these and he claimed  
he does not have them.  
The whereabouts of these  
papers are of great concern  
to me.

I consider it highly  
improper and unethical  
for Phil or anyone to  
have entered my desk  
and removed the  
contents.

Sincerely,  
Don H. L. Lello



## CONSULTING AND NONCOMPETITION AGREEMENT

Effective as of November 17, 1977, B&D Company, Inc. (the "Company"), a Delaware corporation, and Ivan K. Landreth (the "Consultant") agree as follows:

### 1. *Consulting Arrangement.*

1.1. *Consulting Period.* The Company shall employ the Consultant as a consultant to the Company for a period of one (1) year commencing on the date of this Agreement (such period, as it may be extended, the "Consulting Period").

1.2. *Consulting Duties, etc.* The Company shall employ the Consultant (a) to participate in the operation of the timber mill owned by the Company in the first six (6) months of the Consulting Period, and (b) for such purposes as the Company reasonably deems appropriate in the second six (6) months of the Consulting Period; and the Consultant shall devote such time and effort and shall perform such services as are appropriate or necessary to the performance of his duties as a consultant to the Company in connection with such participation and for such purposes.

### 2. *Compensation.*

2.1. *Compensation During Consulting Period.* The Company shall pay the Consultant monthly at the rate of Two Thousand Five Hundred Dollars (\$2,500) per month for the first six (6) months of the Consulting Period and at the rate of One Thousand Dollars (\$1,000) per month for the second six (6) months of the Consulting Period.

2.2. *Reimbursement of Costs and Expenditures.* Consultant will be reimbursed for his reasonable costs and expenses in connection with the performance of services specifically requested by the Company upon reasonable

substantiation and approval by the Company of such costs and expenses.

3. *Noncompetition.* At all times during the Consulting Period and for a period of three (3) years after termination of the Consulting Period, the Consultant shall not, directly or indirectly, as an employee of any person or entity (whether or not engaged in business for profit), individual proprietor, partner, stockholder, director, officer, joint venturer, investor, lender or in any other capacity whatever, compete with the business of the Company or any subsidiary of the Company (each such subsidiary, a "Company Subsidiary"). As used in this Agreement, "compete", "competition" or any variation thereof, means engagement or participation of the Consultant in, or his furnishing aid or assistance in connection with, the design, manufacture, distribution, sale, marketing or rendering of products or services of the type and kind designed, manufactured, distributed, sold, marketed or rendered by the Company or any Company Subsidiary in the Consulting Period or in the one-year period preceding the Consulting Period, including, but not limited to, those products or services the Company or any Company Subsidiary, as the case may be, was then in the process of developing or designing for manufacture, sale, marketing or rendering in the States of California, Idaho, Oregon, Washington and Wyoming.

4. *No Solicitation of Employees.* At all times during the Consulting Period and for a period of three (3) years after termination of the Consulting Period, the Consultant shall not, directly or indirectly, or by any act in concert with others, employ, attempt to employ, recruit or otherwise solicit or induce or influence to leave his employment any employee of the Company or any Company Subsidiary for any purpose. The restrictions described in this Section 4 are applicable in the States of California, Idaho, Oregon, Washington and Wyoming.

5. *No Disclosure of Information.* The Consultant shall not at any time divulge, use, furnish, disclose or make accessible to anyone other than the Company or a Company Subsidiary or their respective directors or officers any knowledge or information with respect to (a) confidential or secret processes, plans, formulas, data (including cost data), machinery, drawings, specifications, manufacturing procedures and techniques, methods, technology, know-how, programs, devices or material relating to the business, products (whether existing or under development), services or activities of the Company or any Company Subsidiary; (b) any confidential or secret engineering, research, development or other original work of the Company or any Company Subsidiary; (c) any other confidential or secret aspects of the business, products or activities of the Company or any Company Subsidiary; or (d) any customer usages and requirements or any customer lists of the Company or any Company Subsidiary. All records, materials and information obtained by the Consultant in the course of his employment by the Company shall be deemed confidential and shall remain the exclusive property of the Company. This provision shall not apply to any information which at any time comes into the public domain other than as a result of the violation of the terms of this Section 5 by the Consultant.

6. *Enforceability.* The Company and the Consultant recognize that any breach by the Consultant of any of his obligations under Sections 3 and 4 would result in irreparable injury and damage to the overall reputation of the Company and to its business and affairs. The Company and the Consultant therefore consider the restrictions contained in Sections 3 and 4 to be reasonable as to the covenants of, and the duties and restrictions imposed on, the Consultant therein, whether in terms of extent, time or geographic area. However, if any such covenants, duties or restrictions are found by

any court having competent jurisdiction to be unreasonable because they are (or any one of them is) too broad, then those covenants, duties or restrictions shall nevertheless remain effective, but shall be considered amended as to extent, time or geographic area (or any one of them, as the case may be) in whatever manner is considered reasonable by such court, and as so amended shall be enforced.

7. *Relief in Case of Breach.* The services to be rendered by the Consultant to the Company in the Consulting Period are unique and extraordinary, which gives them a value peculiar to the Company; and the Company cannot be reasonably or adequately compensated in damages for their loss. Accordingly, any breach by the Consultant of the terms of this Agreement, including, but not limited to, the terms of Sections 3 and 4, will cause the Company irreparable injury and damage. Therefore, the Company shall be entitled, in addition to all other remedies available to it, to injunctive and other available equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, without notice to the Consultant, for the purpose of enforcing this Agreement or any of its terms.

8. *Termination of Employment.* All employment of the Consultant by the Company under this Agreement shall terminate on the earliest to occur of the following dates:

- (a) Upon expiration of the Consulting Period.
- (b) Upon the death or disability of the Consultant. For purposes of this Agreement, the Consultant shall be deemed disabled if he has been unable to render the services required to be rendered by him in the Consulting Period for thirty (30) consecutive days.
- (c) At the election of the Company, upon thirty (30) days' prior written notice.



9. *Payments Upon Termination.* If all employment of the Consultant by the Company under this Agreement is terminated, the Company shall pay the Consultant the compensation otherwise payable to him under Section 2 through the date of such termination,

10. *Miscellaneous.* This Agreement shall inure to the benefit of and be binding upon the Company and the Consultant and their respective successors, executors, administrators, heirs and permitted assigns; *provided* that the Consultant may not make any assignment of this Agreement or any interest therein, by operation of law or otherwise, without the prior written consent of the Company. This Agreement constitutes the entire agreement between the parties and may not be changed except by a writing duly executed and delivered by the Company and the Consultant in the same manner as this Agreement. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington. The Company and the Consultant may execute this Agreement in any number of counterparts, each of which is an original, but all of which shall constitute but one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart. This Agreement supersedes in all respects any prior agreement between the Company and the Consultant relating to any of the subject matter hereof.

B&D COMPANY, INC.

By /s/ Samuel S. Dennis 3d  
SAMUEL S. DENNIS 3D  
Its President

/s/ Ivan K. Landreth  
IVAN K. LANDRETH

# ATTACHMENT H

LANDRETH TIMBER COMPANY, INC.

P.O. Box 505  
Tonasket, Wash. 98855  
Telephone 509-486-2134

[SEAL]

January 10, 1978

Mr. Ivan K. Landreth  
Oroville, Washington

You are hereby given thirty (30) days notice pursuant to Paragraph 8(c) of the Consulting and Noncompetition Agreement of November 17, 1977 that the Company elects to terminate your employment.

I have instructed Phil Cook to have a check prepared to compensate you through the thirty-day period as provided in Paragraph 9 of the Agreement. Please stop by Phil's office at your convenience to pick up your check.

LANDRETH TIMBER COMPANY, INC.

By /s/ Jack P. Branch  
JACK P. BRANCH  
Vice President



[SEAL]

## TIMBER WEST, INC.

November 21, 1977

Mr. Samuel S. Dennis, 3rd

Mr. John Bolton

Hale and Dorr

Counsellors at Law

28 State Street

Boston, Mass 02109

Re: Landreth Mill

Dear Sam and John:

As per our discussion, we made the transition Friday and although I ran into several minor things that needed straightening out, I do feel the transition went well.

As we suspected, there was a great amount of confusion among Ivan's men since they knew something was happening, but did not know precisely *what* was happening.

We had the luncheon with all the principal people and they were all much relieved to finally have the story straight and to have a definite goal or direction that they were going.

There were many small things that you could tell were done in an antiquated way (do it Ivan's way), and it was very gratifying to see a take-charge guy like Phil Cook showing his real leadership capabilities and literally snapping them to and starting to run the show like a real business. I do feel you can be proud of Phil Cook and his business-like manner and overall leadership.

This is a personal observation, but I believe we can be prepared for probably \$10,000 worth of over-run on the final start up costs that will result in accelerating the mill completion by from one to two weeks. In either

case, if this is true, it will be a valuable expenditure to gain the extra production.

As we discussed in our call Friday, we had Warren and Brewster to fly up Saturday morning for a general meeting to go over the various changes recommended by Warren and Brewster originally, but not put in motion by Ivan. Also Warren and Brewster is sending, at Phil's request, three skilled laborers to speed up the mill construction. These men are skilled in doing the assembly work, but this was part of the work Ivan's men were supposed to do, so this labor will be in excess of Ivan's original programmed cost, but should accelerate the Maxi-Mill's completion by one to two weeks.

There is also a shortage in small tools, and any number of things were not ordered, but Phil got the very bulk of these things ordered by phone before the day was over Friday.

Over-all I can summarize this commentary by saying the mill is in good hands with Phil Cook and it is my opinion that he will probably work 12 to 15 hours a day for the next month getting it shaped up and in production in an orderly and profitable manner. I do feel that by the time you two gentlemen come out next month, that you will see something you will truly be proud of. I can say after talking to Warren & Brewster, Phil Cook, Ivan, and Peter Townsend, that I do not have any concern as to whether the mill will reach the productivity and profits that we anticipated. I will talk to Phil from time to time and anticipate visiting the mill about each two weeks and keep you informed accordingly.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack P. Branch

JACK P. BRANCH

President

JPB:jmk

[SEAL]

## TIMBER WEST, INC.

November 28, 1977

Mr. Samuel S. Dennis, 3rd  
 Mr. John Bolton  
 Hale and Dorr  
 Counsellors at Law  
 28 State Street  
 Boston, Mass 02109

Re: Landreth Mill

Dear Sam and John:

I have just reviewed the past weeks progress with Phil Cook and I can tell you he has literally turned heaven and earth to get all of the many small problems worked out. The bulk of the problems were logistical in that Ivan was in and out of the mill and never clearly gave anyone any authority to do anything.

There were several minor problems with electrical hook-ups and Phil Cook has an electrician in today who can resolve all of those problems. The steel and associated equipment for the completion of the maxi-mill log deck has been ordered (it was not even designed prior to last (sic) week) and this material is in and will be completed on schedule.

The debarker on the Helle mill was out of alignment and that is being corrected this week and the Helle mill will start production at between 20,000 and 30,000 bd. ft. per day on Monday, December 5th. Phil will start and run it on a test basis this week, but production will not start until December 5th. The edger has been and is being reset and by the end of this week all functions of the mill have been debugged and in an operable position.

I have talked with Warren and Brewster and there is one more truck load of equipment due in this week (all fabricated) and the Maxi Mill will be in complete operational position between December 10th and December 15th. Phil has indeed made giant strides in this one week since he has been at the mill. The Warren and Brewster people were amazed at how much he has accomplished and were very complimentary to the fact the mill is now being operated as a good operation. They, as well as Phil, are super-optimistic on this being a very good producing mill.

Phil is reviewing a very good stand of timber and will be making preparations for bidding this next week. I will review this in more detail with you in my next report.

In conclusion, I would like to say you both can rest easy with the mill situation as it is. Peter Townsend is due in Tonasket today and I have talked with him over the weekend and I am confident he will set up the books in an appropriate manner. I will keep you posted accordingly.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack P. Branch  
 JACK P. BRANCH  
 President

JPB:jmk

GRAHAM & DUNN  
Attorneys at Law

December 1, 1977

Mr. Philip A. Cook  
General Manager  
Landreth Timber Company, Inc.  
Post Office Box 505  
Tonasket, Washington 98855

Dear Phil:

As you requested, I am enclosing the following items:

Certification of Disposition of Timber from National Forest Sale, covering Chucker Timber Sale, Contract No. 00899-7

Old National Bank of Washington Corporate Combined Checking and Savings Account signature card

Rainier National Bank (Oroville Branch) Corporate Resolutions for Signing and Endorsing Checks

Landreth Timber Company, Inc. has now been merged into B&D Company, Inc., a Delaware corporation, which changed its name to Landreth Timber Company, Inc. Consequently, I changed the name from B&D Company, Inc. in the Rainier Bank form to Landreth Timber Company, Inc. I also completed Paragraph 2 of the form to require your signature and the signature of George Morrell or Louis Zabreznik or Les Schertenleib. Both the ONB and Rainier accounts require your signature on all withdrawals and checks, together with one of the other three authorized signatures.

Let me know if I can be of any further assistance.

Very truly yours,

/s/ Jack  
JACK G. STROTHER

JGS/sw  
Enclosures

File No. 525-31-118

HALE AND DORR  
ORIGINAL FILE COPY  
Not to Leave the Office

December 1, 1977

Mr. Jack Branch  
Timber West Inc.  
300 - 120th Street N.E.  
Bellevue, Washington 98005

Dear Jack:

I acknowledge with thanks your letters of November 21 and 28 reporting to me on the situation at the Landreth Mill. I also talked to Phil Cook yesterday.

I am very pleased to hear and see that things are going well and delighted that Phil was able to bid in the State owned timber offering at a price which he considered satisfactory.

Mr. Bolten and I both appreciate your continuing interest and hope you will continue to go out there occasionally as you in your judgment deem it advisable. I would assume that if Phil is as good as we think he is, outside supervision will not have to be as intensive as time goes on. You should put in statements to the Mill to cover your expenses (with copies to me if convenient). Mr. Bolten and I will talk to you about the over-all financial situation when we see you.

When you report on the Mill operations in the future, Mr. Bolten would appreciate your sending his copy directly to him at his Palm Beach home. The address is: 165 Via Bellaria, Palm Beach, Florida 33480.

We hope to see you some time around the middle of January.

Best regards.

Sincerely,

S. S. DENNIS 3d



[SEAL]

## TIMBER WEST, INC.

December 6, 1977

Mr. Samuel S. Dennis 3rd  
 Mr. John Bolton  
 Hale & Dorr  
 Counselors at Law  
 28 State Street  
 Boston, Mass

Re: Start up of Helle Mill and general progress  
 Landreth Mill

Gentlemen:

I talked with Phil Cook yesterday and I am very pleased to advise that the Helle mill has started production as of Monday December 5th and though it was running slow, Phil advised that by the end of the day, it was running properly and at a rate of approximately 30,000 bd. ft. per eight-hour shift.

Phil advises that he will further test run it Tuesday on production and has a second crew coming to work Wednesday, December 7th (double shift). From that day on, we would expect a minimum of 60,000 bd. ft. per day of approximately \$200 material (rough green dimension lumber). This would be \$12,000 per day cash flow and including the over-run, would be equivalent to approximately \$100 per 1,000 profit.

Phil shipped out one carload last week (\$9,600) and a second carload was shipped out Monday night (approximately \$10,000 to \$12,000). The Maxi mill is on target and we anticipate start up production by December 15th. It will take four to five days to shake it down and it will then be able to produce at approximately 80,000 to 100,000 bd. ft. per day. Phil advises me that between the Helle and Maxi, we will have no problem producing

100,000 bd. ft. per shift and should be double shifting very shortly after the first of the year (presuming there are no major bugs in the Maxi mill start up). This would give us our production capacity of 200,000 bd. ft. per day and with the over-run capacity of the Maxi mill, the profits should easily exceed the anticipated figures of Phil Townsend.

As I recall from Peter Townsend's cash flow projection, we would not be going into double shift production before three months. In this case, we will be ahead of this schedule by nearly two months and accordingly start to catch up on some of the profit slippage due to some of the delays. All of the equipment except one truck load has arrived at the plant and that load is being pre-fabricated and will arrive early next week and will take only a minimum amount of time to assemble. All of the log deck and carriage are in and the electrical work is being finalled (most of it this week).

I have talked to Allen Lambert at Warren & Brewster and he is very well pleased with the cooperation he and his men are receiving and it is gratifying to see a job being well done. This credit belongs to Phil Cook and I would estimate he has spent an average of 12 hours plus per day since his first day. Yes, Sam, I do agree with both you and John that there would be no reason for outside supervision of Phil as I feel he is totally competent in every way. I am merely taking this time to keep both of you abreast of the progress as I see it since I am talking directly with Phil several times each week.

I reviewed the sales and private timber purchases Phil has made since taking over and I feel the job has been well done. However, we are at the crises point of extension of the credit line that allows him to start our own logging operation and build up of logs for the winter season. I anticipate talking to Phil in detail on this at the end of the week and will discuss this with you by

phone after I have some concrete figures. I will then give you my recommendations and conclusions for your submittal to Tom Woods and Rainier Bank for this additional credit line.

I wish both of you gentlemen to recognize that I am not trying to take a pre-emptive position in any of these matters, except that I am on the scene and more closely associated with the problem and I feel I can properly report them to you for your own execution.

Sam, I note in your last line of your letter of December 1, 1977, that you expect to see us around the middle of January. I would presume that you would not be here December 20th as we discussed, but please feel no fear in the over-all operation of the mill. It is a winner.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack Branch  
JACK BRANCH  
President

JPB:jmk

File No. 525-31-118

HALE AND DORR  
ORIGINAL FILE COPY  
Not to Leave the Office

December 7, 1977

Mr. Phillip Cook  
Landreth Timber Co., Inc.  
Tonasket, Washington 98855

Dear Phil:

On a related subject, I guess it is clear that we want to sell as much of our product as possible as lamstock in view of the large price differential. As I understand it, all lamstock must be kiln dried. If only about 20 to 25 million ft. of lumber can be processed through the kiln and 60% to 65% of our product could be sold as lamstock (the figure originally given me when we were looking at the Mill), there might be as much as 10 to 15 million ft. of lumber which could not be put through the kiln and would have to be sold at lower prices. I realize that the price differential right now between green and dried lumber is fairly small—\$10. to \$20. per thousand—and that an additional kiln will cost \$150,000 to \$500,000 depending on installation. However, at \$20. per thousand, the price difference on 10 million ft. would equal lost dollar sales and profits of \$200,000 annually before taxes. A \$200,000 kiln would be paid for in after tax dollars in two years on this basis.

I realize you have a tremendous amount to do and that this problem is not pressing. However, at some point in the fairly near future, I understand you are going to have someone look into this. When I talked to Pease sometime ago about this, he said that there were a number of ways to go varying greatly in cost and a

study should be made of this before deciding what to do. You may or may not want to talk to him and get his ideas before deciding what you are going to do.

Regards.

Sincerely,

S. S. DENNIS 3d

CC: Mr. John Bolten  
Mr. Jack Branch  
Mr. Peter Townsend

File No. 525-31-118

HALE AND DORR  
ORIGINAL FILE COPY  
Not to Leave the Office

December 7, 1977

Mr. Phillip Cook  
Landreth Timber Co., Inc.  
Tonasket, Washington 98855

Dear Phil:

I was glad to talk to you yesterday and learn that things are progressing well at the Mill. As I understand it, the Helle mill went into production the first of this week and you expect to have it on a double shift basis within a week or so with most of the bugs out of it. This should certainly start to produce substantial sales almost immediately where you have no problem selling all we can produce under present conditions.

I have given some further thought to what our overall financial policy should be at the Mill which, of course, is directly connected with the sales policy and would like to give you my thinking.

Obviously I think we should do everything possible to maximize dollar sales. Assuming an annual volume of production of between 40 and 50 million bd. ft. of saleable lumber, every extra \$1.00 per thousand feet amounts to between \$40,000 and \$50,000 extra dollar sales. These extra dollars are, of course, carried directly through to the bottom line as profits before taxes because they do not involve any additional expenses.

With the above in mind, it seems to me that as a matter of policy we should not give significant discounts for cash, etc. unless the lumber cannot be sold to someone at the prices without giving discounts (and unless,



of course, we have to have the money immediately and cannot get it from any other source). For example, assuming 40 million bd. ft. of sales a year and an average price of \$250. per thousand, annual sales would amount to about \$10,000,000. If a 5% discount were given on all of those sales, the result would be to reduce bottom line profits by \$500,000. To put this another way, assuming that the 5% cash discount means that we get our money from 20 to 30 days sooner, the 5% discount equals an interest rate of between 60% and 90% for the use of this money for the extra 20 or 30 days.

In making the above points, Phil (which I guess are pretty obvious), I am not being critical. I realize that I don't know much about this business yet and that good reasons may exist for giving discounts in getting rid of hard to sell lumber or for some other special reason with which I am not familiar. My only point is that done on a wide scale, it does involve sacrifice of a lot of profit and if not necessary because of conditions in the trade, we can obtain the money to finance our sales over normal payment periods a great deal cheaper.

I have also learned from exposure to other businesses with which I have had experience that it is better in the long run to have definite pricing policies and to avoid making price concessions unless it is absolutely necessary. I think customers tend to have more respect for your price structures and question them less if they are as uniform as possible consistent with current competitive prices in the industry. Since we appear to be in a strong sellers market at the present time, this should be a good time to establish such policies—and also to convince our customers that we are a substantial firm which is adequately financed.

I very much appreciate your concern about conserving cash, Phil, and I perhaps overemphasized this in talking to you. We are, of course, not going to have excess cash

for quite a long time so that cash conservation wherever practicable is very important. However, cash conservation at the expense of substantial profits should not be our policy if the financing is available. We will have a better handle on this after I get your and Peter Townsend's up to date cash estimates for the next two or three months. However, I believe financing can be arranged which will make it unnecessary to make price concessions through discounts or otherwise merely for the purpose of getting immediate cash.

I am encouraged by the continuation of the strong market situation for our products. In that connection, I am enclosing an interesting speech which a wholesale lumber friend of mine sent to me given by Senator Proxmire in the Senate on the market and price situation for lumber. You will note that the Forest Service and Council on Wage/Price Stability are projecting continued increases in the demand for lumber relative to the supply with a continuing increase in peak prices. Apparently there is some pressure on the Forest Service to modify their timber cutting policy to accommodate the supply curve and also to institute more efficient forestry operations. All of this, I would think, would help us in the long run.

Mr. Bolten asked to be remembered to you; we are both looking forward to seeing you between the middle and end of January and look forward to hearing from you as to the best time to come.

I should appreciate being kept informed of anything significant and would like to participate in any important decisions such as the purchase of more timber or of any substantial piece of equipment, changes in wage and salary rates, etc. I should appreciate it if you would not sign any check in excess of \$20,000 without giving me a ring or dropping me a note. Mr. Bolten would like to have copies of any letters and papers which you send to me.

I talked to Peter Townsend this morning who enjoys working with you. As you know, I am relying on him for financial-accounting type information and controls and am delighted that you both enjoy working with each other.

Best regards.

Sincerely,

S. S. DENNIS 3d

CC: Mr. John Bolten, Sr.  
Mr. Jack Branch  
Mr. Peter Townsend

[SEAL]

TIMBER WEST, INC.

December 12, 1977

Mr. Samuel S. Dennis 3rd  
Mr. John Bolton  
Hale & Dorr  
Counselors at Law  
60 State Street  
Boston, Mass

Re: Landreth Timber Company

Gentlemen:

After several lengthy conversations this past week with Phil Cook and the ensuing commitment to purchase a newly rebuilt edger, I felt a trip was necessary to give you gentlemen a first hand report.

First the Helle mill was in operation and for the most part the bugs were about out of it, but the edger was still giving problems and it was clearly evident that a more effective edger was needed when the Maxi mill starts production.

The new edger that Phil has negotiated for costs \$36,000, with the installation included, totaling approximately \$50,000. The payment of this will be approximately 50% down on completion of installation and the balance in 45 days.

The new edger is being gone over in the shop today, tomorrow and Wednesday, and will be shipped to Tonasket Thursday. It will be installed completely and in an operable position by Sunday night. Its installation will not interfere with the other edger or the Helle mill operation. This additional expense will give the mill a full double shift capacity (with no problems) of 250,000 bd.



ft. per day. Phil anticipates being able to reach this production level somewhere near January 15, 1978.

Lyle Warren and Allen Lambert of Warren & Brewster are at the mill today making sure all of the structural engineering and design lay-out is exact for the proper installation of the edger.

It was our prompt remittance in response to their billing that is getting such good service from these people where normally this installation would have delayed us probably two to three weeks longer. Phil has been working very well with them and the fact that we have made responsible decisions, they are convinced you gentlemen are real and the credibility of the whole operation has been established on a good plane.

The Maxi mill is still on schedule and should start up between the 15th and 20th of this month and I am confident that we will have the total resources of Warren and Brewster available to us for all of the debugging and start up. In fact, I believe now they will look at your mill as one of their best examples of a truly well run and put together operation instead of somewhat turning their back in the fouled up manner it would have been had Phil Cook not responded to certain changes they recommended in opposition to what Ivan's original plans were.

At this point, it is necessary to bring up the need for our logging inventory financing. First, Phil is anticipating double shifting the Maxi mill approximately the middle of January. This will cause an increased need for log inventory but it will also develop a tremendous amount of extra profit.

I discussed this matter thoroughly with Phil and attempted to call Peter Townsend today, but he is in a two-day seminar and I doubt I shall reach him until Wednesday. Phil will need approximately \$100,000 by December 19th. He will need an additional draw of up

to \$150,000 between December 25th and 30th; and a draw of up to an additional \$100,000 between January 1st and 15th. This totals \$350,000 for the total log inventory and this will include our build up of lumber inventory in the yard since that build up of inventory will come gradually and will come from profits. The reason for this acceleration on inventory is the tremendous amount of logs the Maxi mill will take once it starts, single, then double shift production.

Our biggest over-run will come from the Maxi and the sooner we get it into double shift, the more profit we will make. At the estimated 250,000 bd. ft. per day production, the Maxi will be doing 200,000 while the Helle is doing 50,000.

Phil is making preparations to start the kiln dryer and the planner this week and will be getting into the lamstock market as fast as scheduling would permit. The Helle mill seems to be pretty much debugged, but with the edger giving problems it has not produced at the expected level. This will change the first of next week with the installation of mercury lights for double shifting and the edger with no problems that would allow Helle 75,000 to 80,000 bd. ft. per day production.

There will no doubt be start up and debugging problems with the Maxi mill and with all of the cooperation we are getting from Warren & Brewster, I think these will be normal.

However, with the solving of one problem (the edger) and the start up of the Maxi mill, it is becoming increasingly evident we have an additional problem that Phil is investigating thoroughly at this point and I will report to you by phone and letter within the next two or three days. This problem involves the debarker and with the overall appraisal of production we are looking at, it appears that we will have to set in a separate debarker to feed the Maxi mill. I have no clear evalua-



tion of this dollar expense except that it would certainly be less than the edger and would not cause any significant change in its operation if we act fast.

My own guess from talking with Phil and George and Warren & Brewster is probably in the neighborhood of \$35,000. In either case, Phil has acknowledged that he will be running six days per week and double shifting at all times permissible (Christmas Eve, Christmas, New Year's etc. as exceptions). In this case, he will have virtually made up in additional production, the amount necessary to up grade this portion of the mill.

I can reasonably understand the undersizing of this equipment as related to what Ivan's prior production was in line with what our expectations are and Phil's capability of running the mill at maximum production. I know it is difficult to look at extra expenditure items with each report, but I can conclusively say, that these items are all cost effective to increased production and profits, and Phil simply will run the operation the extra hours and days to make up for these expenses. In fact, they will represent only a few days of production after we are fully started up and yet they will have increased the production capacity of the mill fully 25% if it could have ever been at the 200,000 bd. ft. per day figure at all.

The kiln dryer situation will be handled with appropriate engineering studies after the Maxi is in production and whatever outside sources are needed that all avenues will be explored before making any final recommendations.

Gentlemen, this seems to be a rather heavy letter, but it was really a treat to me to see the mill working (it produced approximately 30,000 bd. ft. Saturday while I was there), and I do not retreat from any of my convictions that your mill will truly be one of the best in this state within just a few weeks.

I will keep you appropriately informed.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack P. Branch  
JACK P. BRANCH  
President

JPB:jmk

5:30 P.M.

Just talked to Phil Cook; he got just over 40,000 bd. ft. out today from the Helle mill.

330

HALE AND DORR  
ORIGINAL FILE COPY  
Not To Leave The Office

December 13, 1977

Dear Phil:

Just a note to tell you how much Mr. Bolten and I appreciate all you are doing for us at Landreth. You are obviously doing an outstanding job and we truly appreciate it.

Please extend Mr. Bolten's and my thanks to the other people in the organization who I know are working so hard to get this operation "on the road."

We wish you and yours a very happy Christmas and prosperous and healthy 1978.

Most sincerely,

S. S. DENNIS 3D

Mr. Philip Cook  
Landreth Timber Co., Inc.  
Tonasket, Washington 98855

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HALE AND DORR  
ORIGINAL FILE COPY  
Not To Leave The Office

December 16, 1977

Mr. John Bolten  
165 Via Bellaria  
Palm Beach, Florida 33480

Dear John:

I am enclosing a copy of a letter regarding additional funding at the Mill which I believe is self-explanatory.

Phil Cook is progressing so fast, the additional money which we had scheduled is being required sooner than planned. However, the Mill is going to be so much more productive and profitable than our original cash flow analysis that Phil thinks we will be paying off bank loans before the middle of the year in spite of having to put about \$100,000 which was not anticipated into new equipment (edger and planer).

Sincerely,

S. S. DENNIS 3D

## TIMBER WEST, INC.

December 19, 1977

Mr. Samuel S. Dennis 3rd  
Mr. John Bolton  
Hale & Dorr  
Counselors at Law  
60 State Street  
Boston, Massachusetts

Re: Landreth Timber Mill

Dear Sam & John:

Phil Cook came over this week-end to review the debarker purchase and meet with the people on the new debarker. From all indications, we have made a very good purchase. The total price being \$25,000 and the indications of approximately \$10,000 of installation labor. The terms were worked out at \$5,000 on delivery, approximately the end of this week, and the balance in January (end of January) from production profits.

We are getting all of the setting plans and the total infeed decking including the engineering plans that would have cost at least \$10,000 (engineering alone). Additionally, there is at least \$15,000 in spare parts (extra ring, extra teeth, extra spare motor and miscellaneous spare parts).

I discussed this with Phil and will at a later date discuss it with Peter and it is my opinion we can capitalize at least \$10,000 extra dollars of our regular mill labor to suffice for this engineering. In other words, we would take a small portion of the labor cost from our Helle production and define the remainder as installation cost and capitalize it. I will discuss this with Peter and inform you appropriately.

Phil has done an excellent job in finding a real bargain and got prices and terms suitable to his cash flow and in my opinion he proved another of the many assets he has by being astute in trading as well as aware of our cash flow involved in securing liveable terms.

I will keep you informed.

Respectfully yours,

TIMBER WEST, INC.

/s/ Jack P. Branch  
JACK P. BRANCH  
President

JPB:jmk



## TIMBER WEST, INC.

December 19, 1977

Mr. Phil Cook  
General Manager  
Landreth Timber Company  
Tonasket, WA 98855

Re: Discount policies lumber sales

Dear Phil:

Just a note to summarize our conversation concerning discount policies with reference to lumber sales. Also taking in mind Mr. Dennis' letter of December 7, 1977 concerning this matter.

Phil, I totally concur with Sam on the overall policy of adhering (sic) as close as possible to the full price theory of sales and where I do not find any particular fault with the method you have used in handling sales to this date, I would like to go on record as saying that we definitely do not wish to fall into a rut of discounting and especially at the figure of 5%.

Phil, I realize that there will be emergencies or unique situations where quality is not up or as in the incidence this past two weeks where sufficient cash was not in the bank for payroll and the added expenses. These items are to the exceptions and certainly not the rule and as per our general conversation along these lines and your ensuing conversation with Mr. Sam Dennis, I am certain you understand our overall feeling in regard to pricing sales and discounts.

I feel you have done an excellent job under a great deal of duress and I do not wish this letter to be construed in a critical manner. Please keep up the good work and

let me hear from you should you have any problems out of the ordinary.

Sincerely yours,

TIMBER WEST, INC.

JACK P. BRANCH  
President

JPB:jmk  
cc: Sam Dennis  
John Bolton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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Civil Action No. C78-663R

LANDRETH TIMBER COMPANY, INC.,

v.

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR. and KATHLEEN LANDRETH, husband and wife,  
*Defendants.*

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IVAN K. LANDRETH and LUCILLE LANDRETH, husband and wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR. and KATHLEEN LANDRETH, husband and wife,  
*Counterclaim Plaintiffs,*

v.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim Defendant.*

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AMENDED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Landreth Timber Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered in this action on May 27, 1981.

DATED this 28th day of May, 1981.

EDWARDS & BARIBERI

By: /s/ John W. Hathaway  
JOHN W. HATHAWAY

Attorneys for Plaintiff

EDWARDS & BARBIERI  
3701 Bank of California  
Center  
Seattle, WA 98164  
(206) 624-0974

Counsel for Defendants/Respondents  
Ivan K. Landreth, et al., is:

James A. Smith, Jr.,  
BOGLE & GATES  
Bank of California Center  
Seattle, WA 98164

H/7291B

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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Civil Action No. C78-663R

LANDRETH TIMBER COMPANY, INC.,  
*Plaintiff,*

v.

IVAN K. LANDRETH and LUCILLE LANDRETH, *et al.*,  
*Defendants.*

---

IVAN K. LANDRETH and LUCILLE LANDRETH,  
husband and wife, *et al.*,  
*Counterclaim Plaintiffs,*

v.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim Defendants.*

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**ORDER OF DISMISSAL**

THIS COURT, on February 29, 1981, entered an Order Granting Summary Judgment in favor of defendants on the basis that the transaction at issue did not involve a sale of securities within the purview of the federal securities laws. Judgment was entered on May 27, 1981. Having concluded that there is no federal jurisdiction over plaintiff's pendent claims or defendants' counterclaims it is now, therefore,

ORDERED that all claims raised by plaintiff and defendants in the above-captioned action are dismissed for lack of federal jurisdiction.

DONE IN OPEN COURT this 13 day of July, 1981.

---

BARBARA J. ROTHSTEIN  
Judge

Presented by:

BOGLE & GATES

/s/ Guy P. Michelson  
JAMES A. SMITH, JR.  
GUY P. MICHELSON  
PATRICIA H. CHAR  
RICHARD D. VOGT  
Attorneys for Defendants

Copy Received; Approved as to  
Form and Notice of Presentation  
Waived:

EDWARDS & BARBIERI

/s/ Charles K. Wiggins  
CHARLES K. WIGGINS  
Attorneys for Plaintiff



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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Case No. C78-663R

LANDRETH TIMBER COMPANY, INC.,  
Plaintiff,

vs.

IVAN K. LANDRETH, *et al.*,  
Defendants.

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COURT'S ORAL RULING

Transcript of proceedings in the above-entitled and -numbered cause, before the Honorable Barbara J. Rothstein, United States District Court Judge, on April 17, 1981.

THE COURT: Counsel, by way of preface to the court's remarks, let me indicate I have read the briefs in this matter and given it very careful consideration. I do not expect my remarks today to be all inclusive by any means. I am going to try to get you a more detailed written statement actually on both issues, probably on the original ruling and this one. I think it will help counsel if there is going to be an appeal to clarify what the court's reasoning was.

For purposes of simplicity I should indicate the court's remarks are going to be primarily addressed to the third portion of the Howey test and that is the reasonable expectation of profits or another way of putting that is the success of the business and that this success will be dependent upon the efforts of others.

The court believes that if indeed the plaintiffs have failed to meet that test then actually the question of the

pooling or commonality test is not really something the court needs to reach. The control test is determinative as far as the court is concerned.

The court believes that the factors that the court should consider are the factors that were present at the time the agreements between the parties were reached and those agreements should be the final agreements of the parties, whether they were reached exactly on November 17th or a few days before that or whatever; the agreements the parties actually executed in the purchase and sale of the business. The court does not believe that earlier factors should be considered; that, I feel, would represent a duplication of allegations of misrepresentation and fraud.

Without going into all of the facts again as set forth by the defendants, it is clear to the court that at the time of closing the plaintiffs intended to keep Landreth on in a consulting capacity. The consulting capacity and the capacity set forth in the consultant agreement was clearly that of an advisor only.

Plaintiffs took all steps necessary to assure that the actual control of the enterprise was in the hands of their own manager. Prior to closing they hired that manager and from everything the court could see very carefully interviewed to hire a manager; that they intended to have complete managerial control of the enterprise. They took additional steps in that they got resignations from all officers and directors, and in short the court is convinced the intent was to have all of the managerial functions in the hands of their own person.

The fact that plaintiffs were absentees, the fact that they themselves had—and the court is convinced they had—no experience in this area is really immaterial, because the term "efforts of others", the term "others" in that phrase doesn't mean anyone other than persons like the plaintiffs who actually are the owners. The owners,

of course, can proceed to run a business through persons they hire, and that, as far as the court is concerned, is not placing it under the control of others. The "other" that would have to be shown here would be that it was Landreth himself, at least on this fact situation. And the fact that the plaintiffs themselves personally did not enter into the running of the business, nor had they any intention of doing so is really not the issue and the court is not persuaded by that.

The court will just make one other comment in that I think the use of the term "reasonable expectation" implies that the test the court must apply is that of an objective test. The court must look to the facts that are available and were available to the parties at the time, and it again must be an objective test. The fact that now at this stage of the game an individual comes back and said that there was some intent at the time not to go through with a deal unless Mr. Landreth were in some way to do something that is just not consistent with the contract entered into by the parties, is not the type of evidence I believe the court should be concerned with in determining the understanding of the parties at this time.

I, therefore, think the court's ruling would be to find that there is a lack of a federal question here and the case would have to be dismissed on that ground.

Again, I will try to get you a better set of reasons, because I do think that the cases cited and the more detailed statement of facts involved would be helpful to you, but I thought rather than keep this thing going on any longer, I would give you the court's reasoning as soon as I was aware of it, and I felt I was aware of it after argument today.

Again, we will try to get that to you as soon as possible.

Is there something else, counsel?

MR. SMITH: Yes, your honor. I noticed in reviewing the El Khadem case in preparation for argument that in that case the court said that because a question had been raised as to whether or not this was a transaction in securities that it technically was not a dismissal for lack of a federal question, but was properly a dismissal for failure to state a claim. I don't know if that in any way bears on the form of the court's decision, but I wanted to point out that decision does contain by way of footnote that reference.

THE COURT: I will take a look at that. My initial response was that I didn't intend to be stating in any way any kind of a ruling, and I should make this clear, on the merits of any of the other claims that plaintiffs' are bringing up. In other words, they have a host of other claims that do not rise under federal statutes, and perhaps the better way to word it would be to say failure to state a claim, but to make that very clear in the court's decision. The reason the court was choosing the other way was to make it clear that it was only the securities question the court has been called to rule upon. I have made no assessment at all as to the veracity of any alleged misrepresentations or fraud or whatever, and I just want that to be very clear to the parties. I suppose I can make that clear whatever way I dismiss.

Did you have a comment on that, Mr. Edwards?

MR. EDWARDS. I had a question just to find out whether I understand the court's ruling. Did the court mean to indicate factors which may have induced the formation of a contract are not relevant, you only look at the contract itself in determining whether or not there is an investment security, particularly the control element? Is that what the court meant when the court said that if they were induced into entering into a contract by a representation that Mr. Landreth would stay on, that this was immaterial?



THE COURT: Let's put it this way, Mr. Edwards. As the court understands it, your allegation or your clients' point is that at some point in the negotiations they may have been very interested in having Mr. Landreth stay on and indeed may even have approached him to stay on in a full-time managerial capacity. That is not the way it ended up. The fact that they may have originally gotten into the negotiations and may have originally gotten involved because they thought he would stay on or he told them he was going to stay on, the fact is that by the time they closed they knew that he was only going to be on as a consultant and they still went through with the closing. Those are the factors that the court thinks are relevant, what happened at the time. If somewhere along the line they thought he was coming in but then he said, "I don't want to be involved full time," they went ahead and closed, understanding that he was going to be only in a consulting capacity, that's all the court is going to look at.

MR. EDWARDS: I would only suggest that the court look at the affidavit of Mr. Dennis again, because I don't think that's what it says.

THE COURT: I understand. Court will be in recess.

#### CERTIFICATE

I, Joseph F. Roth, the undersigned, an official court reporter for the United States District Court, do hereby certify that the foregoing transcript of proceedings is a true, complete and accurate report of my stenograph notes, to the best of my ability.

JOSEPH F. ROTH

#### UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

Civil Action No. C78-663R

LANDRETH TIMBER COMPANY, INC.  
*Plaintiff,*

v.

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR. and KATHLEEN LANDRETH, husband and wife,  
*Defendants.*

IVAN K. LANDRETH and LUCILLE LANDRETH, husband and wife; THOMAS E. LANDRETH; IVAN K. LANDRETH, JR. and KATHLEEN LANDRETH, husband and wife,  
*Counterclaim Plaintiffs,*

v.

LANDRETH TIMBER COMPANY, INC.,  
*Counterclaim Defendant.*

[Filed July 20, 1981]

#### NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Landreth Timber Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order of Dismissal entered in this action on July 13, 1981.



DATED this 20th day of July, 1981.

EDWARDS & BARBIERI

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